TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 121.

THE INLAND AND SEABOARD COASTING COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE W. HALL.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 17, 1884.

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1 *Declaration & Notice to Plead. Filed Apr. 20th,* 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE W. HALL *vs.* THE INLAND AND SEABOARD COASTING COMPANY OF THE DISTRICT OF COLUMBIA.	At Law. No. 22783. Doc. —.

The plaintiff sues the defendant, a body corporate in the District, under an act of Congress approved March 3rd, 1875, for that heretofore, to wit, on the 18th day of February, 1881, while the plaintiff was lawfully engaged at the defendant's wharf, in this city, in painting and lettering upon the wheel-house of defendant's steamboat "Jane Mosely," a portion of the said wharf, through the carelessness of the defendant, fell upon the plaintiff and broke his lower jaw-bone, crushed his left cheek-bone, loosened his teeth, and the bones of his face generally, whereby he suffered concussion of the brain, and was and is thereby permanently injured, disfigured, and disabled.

And the plaintiff avers that in consequence of said injuries he became sick and sore, and so remained for a long period of
2 time, and was compelled and did lay out and expend large sums of money for the services of a physician and for medicines in and about healing himself of said injuries; and, further, that during the time he was sick from said injuries he suffered and is now suffering from fright lest his said injuries may develop into a tumor, and the plaintiff claims $5,000.00 and costs.

And the plaintiff sues the defendant, a body corporate under act of Congress approved March 3rd, 1875, for that heretofore, to wit, on the 19th day of February, 1881, while the plaintiff was lawfully upon the wharf of the defendant, in this city, a part of the shed or superstructure of said wharf, through the negligence of the defendant, fell upon the plaintiff and broke his jaw-bone and otherwise greatly bruised and permantly injured and disfigured him, and thereby he became sick and sore, and so remained for a long space of time, and was compelled to and did lay out and expend large sums of money in healing himself of said injuries, and was
3 for a long time, in consequence of said injuries, prevented from exercising his trade from which he derived large gains and profits, and the plaintiff claims $5,000.00 and the costs of this suit.

L. G. HINE,
Att'y for Pl'ff.

The defendant is to plead hereto on or before the first special term of the court occurring 20 days after service hereof, otherwise judgment.

L. G. HINE,
Att'y for Pl'ff.

4 *Summons. Issued April 20th*, 1881.

In the Supreme Court of the District of Columbia, the 20th day of April, 1881.

GEORGE W. HALL, Plaintiff,
vs.
THE INLAND AND SEABOARD COASTING COMPANY OF THE DISTRICT OF COLUMBIA, Defendant. } At Law. No. 22783.

The President of the United States to the defendant, Greeting:

You are hereby commanded to appear in this court on the first day of its first special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and to show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

[Seal S. C. D. C.]

R. J. MEIGS, *Clerk.*
By J. R. YOUNG, *Ass't Clerk.*

HINE, *Attorney.*

NOTE.—The special terms of the court commenced on the first Tuesday of every month except August, in which month there is no term of the court.

5 *Marshal's Return.*

Served copies of the declaration, notice to plead, and this summons on the defendant by service on J. W. Tompson, president, the 18th day of May, 1881.

C. E. HENRY, *Marshal.*

6 *Plea. Filed July 5th*, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE W. HALL
vs.
THE INLAND AND SEABOARD COASTING COMPANY. } At Law. No. 22783.

The defendant says it is not guilty as alleged.

NATHANIEL WILSON,
Att'y for Def.

7&8 *Joinder & Note of Issue. Filed July 19th*, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

GEORGE W. HALL
vs.
THE INLAND AND SEABOARD COASTING CO. } At Law. No. 22783. Doc. —.

The plaintiff takes issue upon the defendant's plea.

L. G. HINE,
Att'y for Pl'ff.

NOTE OF ISSUE.—Last pleading filed July 19, 1881. Clerk will please calendar case for the next trial term of this court.

L. G. HINE, *P. Att'y.*
NAT'L WILSON,
Att'y for Def't.

9 Proceedings of the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing on the third Monday, being the sixteenth day, of October, A. D. 1882.

FRIDAY, *Nov.* 17, 1882.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

GEORGE W. HALL, Plaintiff,
v.
INLAND AND SEABOARD COASTING COMPANY. } At Law. No. 22783.

Now comes here as well the plaintiff, by his attorney, Mr. Hine, as the defendant, by its attorney, Mr. N. Wilson, and a jury of good and lawful men of this District, to wit, Benjamin F. Waddey, William P. Parke, J. Blake Kendall, Henry E. Stevens, Collins B. Crusor, William P. Sibley, Jacob D. Hutton, T. Marshal Embry, James A. Edgar, James L. Davis, Jasper M. Jackson, and Louis Sondheimer, who, being duly sworn to try the issue above joined, after a partial hearing of the evidence, are respited until the meeting of the court on Monday morning next.

10 TUESDAY, *November* 21, 1882.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

GEORGE W. HALL, Plaintiff,
vs.
INLAND AND SEABOARD COASTING COMPANY, Defendant. } At Law. No. 22783.

Now again come here the parties aforesaid, in the manner aforesaid, and the same jury return into court and on their oath say they find said issue in favor of the plaintiff and assess his damages by reason of the premises at four thousand dollars, besides costs.

Therefore it is considered that the plaintiff recover against said defendant four thousand dollars for his damages in manner and form as aforesaid found and $— for his costs of suit and have execution thereof.

And thereupon the defendant moves for a new trial in the above-entitled case—

1. Because the verdict was against the weight of evidence.
2. Because the verdict was against the instructions of the court.
3. Because of the excessive damages awarded by the jury.

11 The defendant also moves for a new trial upon exceptions taken at the trial.

MONDAY, *November* 20, 1882.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

GEORGE HALL, Plaintiff,
vs.
THE INLAND AND SEABOARD COASTING COMPANY. } At Law. No. 22783.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after the case is given them in charge, retire to their room to consider of their verdict, with permission, if they agree, after reducing their verdict to writing, signing, sealing, and delivering the same to their foreman, to separate until the meeting of this court to-morrow morning.

12 *Motion for New Trial. Filed Nov.* 21*st*, 1882. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

HALL
vs.
INLAND AND SEABOARD COASTING COMPANY. } At Law. No. 22783.

The defendant moves for a new trial in the above-entitled case—

1. Because the verdict was against the weight of evidence.
2. Because the verdict was against the instructions of the court.
3. Because of the excessive damages awarded by the jury.

The defendant also moves for a new trial upon exceptions taken at the trial.

NATH'L WILSON,
Att'y for Def't.

13 In the Supreme Court of the District of Columbia, the 28 day of November, 1882.

HALL, Plaintiff,
vs.
INLAND & SEABOARD COASTING COMPANY, Defendant. } No. —.

The defendant having appealed to the general term from the judgment pronounced herein on the 21st of November, 1882, in the circuit

court, and J. W. Tompson, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

THE INLAND & SEABOARD
COASTING COMPANY,
By J. W. TOMPSON, *President*,
Appellant.
J. W. TOMPSON, *Surety.*

Approved:
L. G. HINE,
Att'y for Pl'ff.

[Endorsed:] No. 22783. George W. Hall *vs.* Inland and Seaboard Coasting Company. Undertaking for appeal by the defendant to gen'l term. Approved Nov. 28, 1882. MacArthur, justice. Filed Nov. 28, 1882. R. J. Meigs, clerk.

14 *Order Overruling Motion for a New Trial & Appeal. Filed Jan. 13, 1883. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

HALL *vs.* INLAND & SEABOARD COASTING COMPANY.

The motion for a new trial coming on to be heard upon the pleadings, testimony, and rulings of the court as set forth in the pleadings and the stenographic report containing the whole of the evidence in said case and being a case stated, said report being filed herewith and made Exhibit A, the same is overruled, and from the order of the court overruling said motion the defendant hereby appeals to the court in general term.

By the court:

MACARTHUR, *Justice.*

15 EXHIBIT A. A. MacA.

Evidence for Plaintiff.

GEORGE W. HALL, the plaintiff, sworn on his own behalf.

Examined by Mr. HINE:

Q. Mr. Hall, you are a resident of the District of Columbia?
A. I am.
Q. You have resided here in this city how long?
A. Sixteen years.
Q. Your business is that of—
A. I am a pattern-maker by trade.
Q. And a painter?
A. I do that sometimes.
Q. Lettering?

A. Yes, sir.

Q. You are now engaged where?

A. At the navy yard.

Q. Well, now, in February, 1881,—allow me to call your attention to it—you were engaged in painting upon the wharf for a day or two?

A. On Saturday, the 19th day of February, 1881.

Q. You have sued the Inland and Seaboard Coasting Company?

A. Yes, sir.

Q. You know that such a company does business at the wharf at the foot of 6th street?

A. Yes, sir.

Q. And they have been using the wharf and in possession of the wharf at the foot of 6th street how long?

A. As to that I could not say, exactly.

Q. A number of years.

A. Yes, sir; a number of years.

16 Q. Now, Mr. Hall, you say you were doing something for that company on the 19th day of February, 1881?

A. Yes, sir.

Q. Will you state as particularly as you can what you were doing and the circumstances under which you were doing it?

A. I was employed by one James Gatchell, who, I believe, was employed by the company to letter and paint the wheel-house of the Jane Moseley, and while doing that work a portion of their wharf, or the uprights which support the roof of the shed, fell in on me and crushed my cheek.

Q. The Jane Moseley belonged to the Inland and Seaboard Coasting Company?

A. That is my belief.

Mr. WILSON: Well, we admit that.

Q. Now, will you state in relation to that wharf where the Jane Moseley was lying (which you say had been in their possession for a number of years); what was the condition of that wharf about the time that you received this injury?

A. Well, the part we were working on, there was a platform thrown from the wharf to the guards of the Moseley. Four or five of the upright pieces of the shed were sawed off and pressed in two or three feet from the perpendicular line, and there was a rope stretched across the wharf holding the top of it, and that rope snapped—I should judge that was the cause of it—and that portion fell.

Q. Well, how long had you been painting there before it fell?

A. I should judge about two hours.

Q. How were you situated in painting? What arrangements had been made for accommodating you in painting or lettering the name of the boat on the wheel-house?

A. Well, a few boards—a few steps, you might say, were thrown from the wharf to the guards of the Moseley, and we were standing on that.

Q. And the boat was close to the wharf, was it?

A. Yes, sir.

Q. So that the platform that was used for doing this painting rested on the wharf?

17 A. One end of it rested on the wharf and the other on the guards of the Moseley?

Q. The boat, then, at the wheel-house was a little off from the wharf?

A. Yes, sir.

Q. And the place was connected by a platform running out from the wharf onto the guards of the boat?

A. Yes, sir.

Q. You stood on that platform?

A. Yes, sir.

Q. The boat was attached to this wharf—the company's wharf?

A. Yes, sir.

Q. Well, you may state to the court and jury how you happened to go there to do the painting—you and Mr. Gatchell.

A. Well, I was engaged by Mr. Gatchell; he was employed by the company. The boat was to leave the following Monday morning, as I understood Mr. Davis, superintendent of that company, to state, and they wanted that lettering done before she went away.

Q. Well, this was Saturday?

A. This was Saturday.

Q. Well, now, you and Mr. Gatchell went where when you first went down to the boat?

A. We went on one of these packet vessels that run between here and New York; I do not — whether the "Gibson" or the "Knight." Mr. Gatchell wanted to see Mr. Davis.

Q. You were with Mr. Gatchell at the time?

A. Yes, sir; I do not know what words passed between them.

Q. You went aboard the boat, Mr. Hall, but didn't hear what passed between Mr. Gatchell and Mr. Davis?

A. No, sir.

Q. After that conversation between Mr. Gatchell and Mr. Davis, who, I believe you said, was the superintendent of the company?

A. Yes, sir.

Q. After that conversation you and Mr. Gatchell went where?

A. We went off to paint the wheel-house of the Moseley.

18 Q. You went immediately over there to that wheel-house and went to work, and had been there for about two hours?

A. Yes, sir.

Q. Well, what was the distance from the roof of this wharf to the platform on which you were standing?

A. I should judge from 8 to 10 feet.

Q. It was the wharf that had been there for some years?

A. Yes, sir.

Q. And there was no change in it so far as you had observed, except that they had sawed these posts off and ran them in some distance?

A. Yes, sir.

Q. While you were painting there what happened in reference to that roof?

The WITNESS: What do you mean?

Q. Well, what did you first notice after something had struck you?

A. I wasn't able to notice much of anything. After I got up I noticed that there was a large pile of lumber on top of me.

Q. And you noticed that a portion of the roof of shed had fallen over onto you?

A. Yes, sir.

Q. Do you know how that roof had been supported?

The WITNESS: Do you mean after it had been sawed off?

Mr. HINE: Yes, sir. Did you observe that at all?

A. I know there was a rope stretched across the wharf.

Q. What effect had the falling of the roof upon you? State fully to the jury.

A. Well, it dislocated my jaw and crushed the cheek-bone in.

Q. It struck you on the face here (indicating)?

A. Yes, sir; right across the face that way (indicating the left cheek).

Q. Who got you out?

A. I believe Captain Wood, who was employed in that company at one time, was one, and several of the laborers who were employed on that wharf came to help me out.

Q. How long were you disabled?

A. I was in bed; could not get out for nine or ten days, and I had to go around with a bandage over my eyes for a month.

19 Q. How long were you disabled from labor?

A. Well, I didn't go to work again until the last part of April.

Q. You get steady employment when you are able to?

A. Yes, sir.

Q. Your business is that of model or pattern maker or letterer?

A. Yes, sir.

Q. What is your pay?

A. For pattern-making I get $3 a day.

Q. What for painting?

A. Well, whatever they pay.

Q. Well, how about your teeth; were they knocked out?

A. No; they were not knocked out, but I could not make use of my jaws for two months to chew anything. I could not get my mouth open wide enough to get my fingers between my teeth for nearly two months.

Q. You were entirely disabled during that time?

A. Yes, sir.

Q. Where is Mr. Gatchell?

A. He is at Bayonne, New Jersey.

Q. You have a telegram about his being here, have you?

A. Yes, sir.

Mr. HINE: We suppose he will be here before night?

Q. Was this contract taken by Gatchell or was it an employment in which you joined him in which you were to receive one-half?

A. Whatever arrangements he made with Mr. Davis I was to receive one-half of what he got.

Q. The parties saw you painting there, I presume?

A. I do not know; when Captain Wood picked me up I had my paint-brush in my hand, smeared all over.

Q. You went there for the special work of doing that painting?

A. Yes, sir.

Cross-examination by Mr. WILSON:

Q. Where were you employed before that?

A. At the navy yard.

Q. Had you been discharged or dismissed from the navy yard?

A. I was suspended by want of work; they were short of work there.

Q. When?

A. One week prior to the accident.

Q. And you had no work for a week before the accident happened?

A. No, sir.

Q. How did you happen to be down on the wharf?

A. I was invited to be there by Mr. Gatchell.

Q. Where did Mr. Gatchell reside at that time—in that part of the town?

A. At that time he was stopping with me.

Q. At your house?

A. Yes, sir.

Q. Is he a regular painter?

A. Yes, sir.

Q. Are you a painter by trade?

A. I am a pattern-maker by trade, but do painting.

Q. You had no agreement of any kind, or any arrangement with any representative of the company? Your arrangment was exclusively with Mr. Gatchell, and you looked to him for pay?

A. Yes, sir.

Q. Did you live in that part of the town?

A. No, sir; on Capitol Hill.

Q. Had you been down there that day to look at the wharf within a short while?

A. Yes, sir.

Q. Do you remember that there had been a great rise in the river and the river had been full of ice a short time before that?

A. One week before that, sir.

Q. And was not the wharf very much broken and twisted by the ice?

A. I didn't see any of that.

Q. You didn't see it?

A. No, sir.
Q. Where was the boat when you saw it?
A. In the water.
Q. And resting partly on the wharf?
A. No, sir.

Q. Now, about these uprights. Did you notice whether
21 they were sawed off or broken by the pressure of the boat?

A. I didn't notice whether they were sawed off or broken off, but I noticed they were standing on an angle like that (indicating), and held by nothing but the nails holding them and the rope.
Q. But what caused the uprights to be in that position; do you not know?
A. No, sir.
Q. They were in that position?
A. Yes, sir.
Q. What was it that hit you; have you any idea?
A. Well, the upright pieces that held the roof.
Q. Were you in the act of painting the side of the boat?
A. Yes, sir.
Q. Well, I do not understand exactly how that could be. Here is a platform, we will say—here is a platform leading up to the boat (illustrating).
A. Right straight across.

The COURT: The platform of the wharf?
Mr. WILSON: No; the platform built——
The WITNESS: A platform built from the wharf to the Moseley—a kind of scaffolding.

Q. The boat was in the water?
A. Yes, sir.
Q. And you were on the platform, painting?
A. Yes, sir.
Q. What portion were you painting?
A. Mr. Gatchell drew the outlines and I was doing the filling in.
Q. What part?
A. The top part. I could very easily reach it without reaching over.
Q. Could you reach the top?
A. Not the top of the wheel-house, but the top of the lettering.
Q. Was it one of the uprights that struck you, or the roof of the shed?
A. That I would be unable to say, what it was.
Q. Whether it was the roof or the uprights?
A. O, I know it wasn't the roof; the roof didn't fall.

Q. The roof did not fall?
22 A. Not to my knowledge.
Q. The roof kept its position; it was the uprights?

A. I was lying under a pile of lumber.
Q. When you were struck you were unconscious?
A. No, sir.
Q. You were conscious?

A. Yes, sir.

Q. Was Mr. Gatchell painting with you at the time the accident happened?

A. Yes, sir.

Q. Standing on the same platform?

A. He was stooping down attending to one of the letters.

Q. Was work going on on the wharf?

A. Yes, sir; I believe they were putting coal aboard the Moseley, if I am not mistaken.

Q. Men were at work about the wharf?

A. I noticed some carpenters away up at the other end of the wharf.

Q. Who was your physician—who attended you?

A. Dr. Mauss. Dr. Hamilton was called while I was lying down at the wharf.

Q. When did you say that you first got work again?

A. In the latter part of April.

Q. You were not employed at the navy yard before that?

A. Not after I got hurt.

Q. That was the first employment that you had of any kind?

A. Yes, sir.

Q. In the latter part of April?

A. Yes, sir.

Q. Have you been employed steadily since?

A. No, sir, not steadily; I have lost a little time.

Q. You are able to pursue your usual business?

A. Yes, sir.

Redirect examination by Mr. HINE:

Q. Is there any effect from the injury now?

A. Sometimes I have very severe headaches. If I stoop my head over for any length of time everything gets black before my eyes.

23 Q. What effect has it upon your jaws?

A. Well, they get tired if I get hold of a piece of tough meat and have to chew it.

Q. Is there any soreness there?

A. Well, all through here (indicating) there is a numbness here.

By the COURT:

Q. I do not understand, Mr. Hall, what fell on you, or rather what fell down—not what struck you; but what fell there?

A. A portion of that wharf, or rather a portion of the shed that covered the wharf.

Q. Was the shed boarded in at the sides?

A. Yes, sir; it was boarded; it was solid work.

Q. And the roof was supported by posts?

A. The roof was supported by posts, and these boarded over like this wall here (indicating the wall of the court-room in the rear of the witness stand).

Q. What was it that stood at an angle?

A. You might call it the "wall." It had been sawed off or broken off. I did not examine it very closely. It had been pressed in several feet at the bottom at an angle like that (illustrating), and a rope was stretched across the wharf on the inside. I do not know whether the rope broke or was cut or what it was.

Q. What was this rope put there for?

A. It was to hold that portion up. The top part of it stood like that (indicating), and of course when the rope broke it would naturally fall over like that (indicating); the top part of it struck me on the head.

Q. It was the top part of the wall that struck you?

A. Yes, sir.

Q. That fell in consequence of the breaking of the rope?

A. Yes, sir; and it would not have fallen if it had not been broken off at the bottom.

Q. Was it broken at the bottom?

A. The upright posts had been broken or sawed off.

Q. That is, the posts that held it?

A. Yes, sir; the upright posts.

Q. I suppose this was a board shed, and the posts were nailed to these upright posts?

A. Yes, sir.

Q. And these posts, you state, had been cut away at the bottom?

24 A. Yes, sir.

Q. Then there was nothing to support the wall?

A. No, sir.

Q. It was suspended at the top?

A. Yes, sir; but this rope stretched across the wharf had a tendency to hold it and the nails at the top had a tendency to hold it.

Q. And that entire partition fell down?

A. Well, a section of it—I guess 8 or 9 feet long.

Q. And that is the part that struck you on the head?

A. Yes, sir.

Recross-examination by Mr. WILSON:

Q. Well, I want to ask another question now. The wharf runs out into the river; there is an end to the wharf and sides to the wharf; the end of it is open; here is the river; the wharf runs out into the river; this is the end of the wharf and this is the side of the wharf (illustrating), and persons going on the boat go on to the side or the end. This is the south side of the wharf (indicating); this side of the wharf is closed by uprights and boarded, and so is this part (indicating)?

A. Yes, sir.

Q. The Moseley is over here (indicating)?

A. Yes, sir.

Q. Now, will you say whether you saw anything on the wharf, as to whether these uprights had been broken off and crushed by the ice and new uprights had been put there?

A. The uprights were put there when the shed was built.

Q. Were not the larger uprights that were a part of the shed broken in, and were there not some uprights put there for the purpose of temporarily supporting the roof?

A. No, sir.

By the COURT:

Q. Then this accident did not occur at the end of the wharf, but at one of the sides of the wharf?

A. Yes, sir.

Mr. HINE: The Moseley was lying at one of the sides of the wharf and she had been crushed in and it was necessary to do some repairing and painting.

The COURT: Which side was she lying at?

Mr. WILSON: The north—really the west side of the wharf.

The WITNESS: The boat was on the north side of the wharf.

Mr. WILSON: Really it would be towards the west.

Mr. HINE: They could not get to the boat to paint except by going over the wharf.

The COURT: He stood upon the wharf while he was painting?

Mr. HINE: He stood upon a platform that rested one end upon the wharf and one end upon the boat. It was necessary to rest on two or three planks that they used for painting purposes. While engaged in painting this wharf fell over him.

The COURT: One end of the platform rested upon the boat and the other end on the wharf, and he was standing upon that platform painting?

Mr. HINE: Yes, sir.

By Mr. HINE:

Q. You could not go onto the platform without going onto the wharf?

A. No; not very conveniently, without going onto the boat and over the guards.

RICHARD G. MAUSS sworn on behalf of the plaintiff.

Examined by Mr. HINE:

Q. You are a medical practitioner?

A. Yes, sir.

Q. Your residence is——

A. 1701 Sixth street northwest.

Q. You have been practising in this city how long?

A. About eleven years.

Q. And you are engaged now as a practitioner of medicine?

A. Yes, sir.

Q. Do you know the plaintiff in this case—the young man who just testified?

A. I do.

Q. In February, 1881, were you called to see him in your professional capacity?

A. Yes, sir; I was.

Q. In what condition did you find him?

26 A. I found his face and head very much bruised, his eyes closed up, and in fact the first day I could hardly make out how much damage had been done. There was so much swelling it was difficult to ascertain. It gradually developed itself. When the swelling went down I found the eye was completely suffused with blood, the cheek-bone crushed in, and the part of the jaw was so bruised that he could not use it, and there was so much concussion of the brain that he was for one or two days almost entirely unconscious. He could not look out of his eyes. That was when I came there. I kept on with my visits. For nine or ten days he had to stay in bed. As to his jaw, he could not use it for a couple of months after that—could not open it except for perhaps half an inch—and the eye was for perhaps a month suffused with blood. The bruise on his cheek was so bad that for perhaps six or seven months after he went out it was blue and black and green; assumed all sorts of colors. For about eight or nine days I thought he might die from concussion of the brain, because he was entirely unconscious; and he has not been well since, because he has developed some injuries—the injury has developed such a peculiar indifferent disposition of mind. I have not mentioned that to him, but it has been remarked by all his family. I do not care to enter upon that.

Q. As to the permanent effect of that injury, what have you to say about that, Doctor?

A. Well, the permanent effect, as I remarked just now, is this peculiar disposition, this change of mind, and in time tumor or cancer may develop from this bruise in the cheek. This cheek-bone was completely crushed in. I know one or two other cases where a case of cancer developed, though not from causes like this—from wounds received during the war.

Q. That eats away and results in speedy death, I presume. Is that the effect of it?

Mr. WILSON: That is hardly the form of a question.

A. It may develop.

Q. This was in February, 1881. How long did you attend him?

A. Well, for about five or six months—steadily two or three times a day for about nine or ten days, and then after that I used

27 to attend him off and on, or he would come to my house. The main difficulty with him when he first attempted to go out was he got dizzy. Everything got black, and his jaws troubled him, and it was difficult for him to chew anything. He could not open his mouth to any extent for five or six weeks.

Q. Did you know anything of him before this?

A. Yes, sir; very well.

Q. What have you to say as to his physical condition before this injury?

A. Oh, he was in perfect health.

Q. A strong and hearty young man, was he?

A. Yes, sir.

Q. And from now on you say you diagnose his case——

A. Oh, it is by no means as good. As I say, this change in his disposition is the worst of all, because he is so different from what he was. There is not that vigor or that energy in him that there was.

Q. To what do you attribute that difference in disposition of mind that you mention?

A. Well, after that injury—it is something that we have discussed repeatedly—he is an entirely different man from what he was before. He doesn't take that interest in his domestic or other affairs that he did before—unamenable to reasoning. This is a part that I did not wish him to hear.

Mr. HINE: Well, we must take it as it goes along.

Cross-examination by Mr. WILSON:

Q. Where do you reside, Doctor?

A. 1701 Sixth street northwest.

Q. Are you a member of the medical society of this District?

A. Yes, sir; both.

Q. You are a member of both?

A. Yes, sir.

Q. How long have you practised here?

A. It is in the eleventh year.

Q. Do you live near Mr. Hall?

A. No, sir; I live a good ways off from Mr. Hall.

Q. You are not related to him in any way?

A. Oh, not at all—not a particle.

28 JOHN R. WOOD sworn on behalf of the plaintiff.

By Mr. HINE:

Q. Captain Wood, give your full name so that the reporter can take it.

A. John R. Wood.

Q. How many years have you resided here?

A. Ever since the close of the war.

Q. What business were you engaged in in February, 1881?

A. Steamboating.

Q. Do you know Mr. Hall, who testified in this case?

A. I remember him very well, sir.

Q. You know of the Inland Seaboard Coasting Company, I presume?

A. Yes, sir.

Q. And the Jane Moseley belonged to that company?

A. Yes, sir.

Q. Well, now, Captain, were you on that wharf at the foot of 6th street in February, 1881?

A. Yes, sir.

Q. Did you see Mr. Hall there?

A. Yes, sir.

Q. Will you state to the court and jury just what you observed and what you did? Give it in detail, please.

A. Well, on the day of the accident I was on the wharf on the east front, and a crash came, and I heard some one hallooing, and I ran and was satisfied that some one was hurt; and Mr. Gatchell assisted him up, and with my assistance they brought him to the office. He was unconscious and could not speak for awhile. We secured a cot for him and made him as comfortable as we could, and I sent for Dr. Hamilton, the nearest physician we could get. He attended him for a while, and I sent over and got some stimulants for him; somebody suggested some whiskey or something, which we gave him.

Q. Well, where did you find him?

A. Mr. Gatchell lifted him from the wharf.

Q. What was he doing before this shed fell?

A. He had been painting there.

Q. Painting on the Moseley?

A. Painting the Moseley; lettering the Moseley.

Q. Well, did you find anything in his hand when you picked him up?

29 A. I do not remember that, sir; I know he was bleeding quite freely from the mouth and nose.

Q. What was it that fell at that time that struck him?

A. Well, there had been a portion of the roof, probably about ten or fifteen feet, that had been cut away so that we could get there to work to get the Moseley off the dock. During the heavy freshet a current came up and she was crushed over the dock, and we had to cut away a portion of the piling and the roof. Then there was a cross-piece put up to support the roof—two uprights run in just about that position (indicating), and there was a cleat put at the foot of each of these upright pieces to keep it from slipping out, and there was plenty of blocks and ropes put on there to hold it at the time.

Q. Now, when was this change made—this lashing of ropes and this cutting away of the wharf; how long was that done before the wharf or shed fell?

A. O, some time; I do not remember the time, but some days.

Q. By whom were these posts cut away and this lashing of ropes done?

A. By men employed by the company.

Q. By the company—the Inland and Seaboard Coasting Company?

A. Yes, sir; there was a ship's carpenter who had been working there during the freshet on one of the ships.

Q. And the Moseley during the time these boys were painting there was lying at the wharf, and when this cutting away of the roofs and lashing of the ropes had been done?

A. Yes, sir; she was on the upper end of the wharf.

Q. These young men were doing what?

A. Painting and lettering.

Q. You have stated that when these posts were first cut away by the Inland and Seaboard Coasting Company they were lashed sufficiently by ropes?

A. Yes, sir; the boat was crushed in by the pressure of the ice, and it was necessary to get her out of the dock, and in doing that we cut this roof away in order to have room to work and not be in danger of hurting anybody, and it was lashed sufficiently at the time.

Q. The company cut these posts off?

30 A. That was all broken in. We took them out of the way, and this upright portion was put in to keep it safe.

Q. They put in new uprights?

A. Yes, sir.

Q. They put them in slanting?

A. They put them in to hold that portion of the roof—the portion that had been cut away and had been removed.

Q. The company first cut away the posts that had been broken in by reason of the boat being thrown up against it by the ice and put new standards there or posts?

A. Yes, sir.

Q. New standards or upright posts?

A. Yes, sir.

Q. And they were put in a slanting position to get room to work at the boat?

A. Yes, sir.

Q. And at the time they had lashed it securely at the top?

A. Yes, sir.

Q. Well, what do you mean by "at the time?"

A. At the time they put these upright posts there and the cross-beam.

Q. And securely lashed?

A. Yes, sir.

Q. How was it at the time of this accident?

A. Well, I did not know any better until after the accident than that it was all right.

Q. What had been done from the time that it was lashed securely, as you say, until this accident?

A. Some of them had been removed.

Q. By whom?

A. By the mate of the ship, I presume.

Q. What ship—this company's ship?

A. Yes, sir.

Q. So that some of the lashings had been removed by a mate of the company's ship?

A. Yes, sir; I think Mr. Savage, the mate of the company's ship, superintended the work.

Q. Well, after these lashings had been removed was it secure and safe?

A. Well, I could not say.

Q. It fell, at any rate?

31 A. Well, if it had been secured properly it would not have fallen.

Q. Well, the falling of the roof was what did the injury to this boy, Mr. Hall?

A. Yes, sir. At the time it was fastened properly, and it seems that when the ship left the ropes that were there belonged to the ship that left and Mr. Savage took them away, and I found out afterwards that he only left this one block and fall.

Q. When did you first learn that?

A. I first learned it when he was taking them off.

By the COURT:

Q. Was he mate of the Moseley?

A. No, sir; but he was mate of one of the New York ships that belonged to the company that was at the dock. She sailed some time before the accident.

By Mr. HINE: And you say he left there only one lashing?

A. That is all that I saw after the accident. After the accident I felt interested enough in the matter to go and see and try to ascertain the cause of the accident.

Q. Well, now, Captain, just state clearly just how this roof was fastened at the side, how it was removed, if at all, and by whom, and what the condition of this wharf was and the fastenings at the time of the accident. Just tell us all about it.

A. Well, sir, all that I could find at the time of the accident was just this one fall, that seemed to hold it—a block and fall. There had been a double block at each end and hauled taut across the top, and when it was broken I found it broken some three or four feet from where it was fastened.

By the COURT:

Q. What was the object of it?

A. To hold it up.

Q. How does it come in contact with the shed so as to hold it up?

A. There are two upright posts like that (indicating), a cross-piece here (indicating), and a rope and fall in such fashion (indicating).

Q. And the rope was fastened to these uprights?

A. Yes, sir; the rope parted and, of course, it fell over.

Q. How did the rope keep those in their place?

A. If they had been driven up it would have held the roof.

32 Q. Well, there were braces at the roof, at the top?

A. Yes, sir. Some one said afterwards that a wagon had been in on the dock, but I do not remember seeing any wagon. It had evidently been caused by some jarring or springing on the roof, and the rope had parted.

By Mr. HINE:

Q. You say you examined it immediately after the accident?

A. Yes, sir.

Q. And when you examined it you found but one block and fall?

A. Yes, sir.

Q. How many were placed there in the first instance?

A. Several of them. It took a pretty good purchase to get them up in position; it took three men, I think, to get them up.

Q. Well, this fastening; what can you say as to its being such a fastening as would make such a structure as that reasonably secure?

A. Well, it might hold it if there was nothing to strain it, no jar to start it.

Q. It "might hold it?"

A. Yes, sir.

Q. Well, if one was enough what was the reason of putting three, four, or five in the first instance?

A. We wanted to make it secure.

Q. Then this one would not make it secure?

A. This one fall wouldn't get it up in the position it was at the time; no, sir.

Cross-examination by Mr. WILSON:

Q. Captain, you were the captain of the Moseley at that time, were you not?

A. No, sir; captain of the "Lake."

Q. Was the "Lake" there?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. You are not connected with the company now?

A. No, sir.

Q. Under whose direction were these posts put in, the uprights and tackling and fall?

A. That I could not tell you.

33 Q. Did you exercise any direction over it?

A. I helped to do it.

Q. What were you doing there on this day?

A. I was captain of the "Lake."

Q. The "Lake" was running?

A. She was laid up, but we had steam up, expecting to leave, for two or three days and nights. I was taking care of the ship.

Q. Well, did you have steam up when this accident occurred?

A. The ship had sailed at that time. The New York ship had left the wharf, but the "Lake" was at the wharf.

Q. What were you doing the day this accident happened?

A. I was on the dock the day the accident happened.

Q. Did you have any duties there?

A. Yes, sir; I was captain of the "Lake."

Q. The "Lake" was there at the wharf? Did you have any duties in relation to the wharf?

A. No, sir.

Q. The wharf was being repaired, wasn't it?

A. Yes, sir; the dock had been wrenched very badly by the movement of the ice.

Q. And was injured and was being repaired?

A. I do not remember whether it was being repaired at that time, but it was repaired.

Q. Now, by whom was this fall first put up?

A. I think it was put up by the mate.

Q. Who was the mate?
A. Mr. Savage.
Q. This gentleman here (indicating)?
A. Yes, sir; I think he superintended the work and the men off his ship.
Q. And did you have anything to do with that work?
A. I was around.
Q. You were around and saw it done?
A. Yes, sir.
Q. But he superintended it?
A. I think he superintended the lashing of the work. It was cut out without my knowing anything about it. Of course, I did not superintend it, and had no orders to that effect. I was only captain of the "Lake," and had nothing to do with the dock.

34 Q. Mr. Savage was a competent man to do that work?
A. Yes, sir; I think so.
Q. You trusted yourself; you went in and out on the boat?
A. Yes, sir.
Q. Well, now will you be good enough to say again what ropes you saw put up by Mr. Savage?
A. I could not tell you the number, sir—not exactly; I know there were other ropes there, and I remember seeing Mr. Savage take them off before the ship sailed.
Q. Do you remember seeing him put any back?
A. No, sir.
Q. Do you say he did not put any back?
A. No, sir; but there wasn't any on it but the single rope at the time of the accident.
Q. If Mr. Savage took some off and put some back you did not know it?
A. If he put any back at the time of taking the others off I am not aware of it.
Q. You do know that there were not as many ropes there at the time of the accident as before?
A. No, sir.
Q. Did you examine the rope to see where it was broken?
A. Yes, sir.
Q. Where was it?
A. Three or four feet from where it was made fast on an upright post over the shed. I examined it and had the rope put away,
Q. How was it broken? Was it broken sharp or pulled out?
A. The rope was in a very bad condition.
Q. I do not exactly understand where this rope was fastened. The upright was in this way, wasn't it (indicating an angular position)?
A. Yes, sir.
Q. Suppose this was the wharf, and the uprights were along here (indicating), were they not?
A. Yes, sir.
Q. This is just exactly the way the thing went?
A. Yes, sir.

Q. This was the roof (indicating)?
A. Yes, sir.
Q. These uprights were temporary sticks?
35 A. Yes, sir.
Q. How many were there of them?
A. Two.
Q. And there were cleats down there at the bottom to prevent them slipping in that direction (indicating)?
A. Yes, sir.
Q. Now, where was this rope fastened?
A. In the center (indicating).
Q. And which way did it go down?
A. This way (indicating), toward the steamer.
Q. And what was the other end of the rope fastened to?
A. To an upright post, across the dock about twenty or thirty feet. Here is the upright post (indicating).
Q. The boat was over that way (indicating)?
A. Yes, sir.
Q. The rope was made fast to this post (indicating)? This end here was made fast over the dock to an upright post twenty or thirty feet away?
A. Yes, sir.

(During the foregoing examination the witness and counsel made their illustrations by means of books and pencils.)

By the COURT:

Q. What is that you are holding in your hand (referring to pencil held by witness)?
A. This is the cross-piece. (Laughter.)

By Mr. WILSON:

Q. One end was fastened where that pencil is, and the other end came out here on the wharf (indicating)?
A. Yes, sir.
Q. Now, will you state when you saw these things put up? (After a pause:) I suppose the rope was to prevent it from slipping?
A. Yes, sir.
Q. The uprights supported the roof, and would have supported the roof unless they had slipped out?
A. Yes, sir.
Q. And they were protected from slipping out by these cleats, which were driven in as far as they would go?
A. Yes, sir.
Q. Now, how many ropes did you see fastened to that cross-piece?
A. There were three or four.
Q. At the time of the accident?
36 A. I could not state.
Q. Where were they fastened?
A. Here (indicating), and here (indicating), and one here (indicating).

Q. Three ropes?
A. Three or four; I could not tell you exactly the number.

By the COURT:

Q. What sustained the cross-piece in its position up there?
A. The two uprights.
Q. Was it fastened to the uprights?
A. Yes, sir; rested on it. It was driven up against the roof. These two uprights pressed against it that way (indicating). We had these falls put on there and heaved it back as strong as it could against the rope to keep it from falling.
The COURT: So that when the rope was removed——
Mr. WILSON: All the weight would fall back against the uprights and they might slip out.

By Mr. WILSON:

Q. You saw the ropes put there?
A. Yes, sir; I saw the men at work, and noticed it afterwards.
Q. How long was it before this accident happened that you saw the ropes removed?
A. I could not tell you, sir, to a day; it was just a very short time before the ship sailed.
Q. Was it a day or an hour?
A. I would not like to say.
Q. Was it the same day?
A. It may have been the same day or it might have been the day after.
Q. Well, it may have been a week or a month. I am asking you about how long before the accident the ship had sailed away?
A. I cannot tell you when the ship sailed. I think the ropes were taken off by Mr. Savage the day the ship sailed from the dock.
Q. This accident happened, I will say, on Saturday—that is the testimony. Now, how long before that was it that the ship sailed? How long before that did you see the ropes taken away?
A. That I could not tell you.
Q. Can you give us any idea?
37 A. Well, I think they were taken off a short time before the ship sailed.
Q. Well, "a short while" is a very indefinite thing—the same day?
A. That I cannot say.
Q. You do not know how long that one rope had been allowed to stand there?
A. That rope had been put there with the other ropes.
Q. And all the others——
A. All the others had been removed.
Q. But how long that single rope had been allowed to stay there you do not know?
A. It was allowed to stay there until it fell.
Q. Did you see that single rope there at any time before the accident?

A. Yes, sir.
Q. You saw the single rope there before the accident?
A. Yes, sir.
Q. How long—how often?
A. I do not know how often.
Q. Well, several times?
A. Yes, sir.
Q. It never occurred to you that it was unsafe, did it?
A. I never gave it a thought.
Q. You went in and out.
A. Yes, sir.
Q. Did you go in on the Moseley?
A. Yes, sir.
Q. On that same day?
A. Yes, sir.
Q. When you saw that single rope there did you go in and out?
A. Yes, sir; I was in there talking to the painters.
Q. And there was nothing there to indicate that it was unsafe?
A. I never gave it a thought; it might have killed me.
Q. You never gave it a thought, although you saw there was but one rope?
A. Yes, sir; I noticed the rope there before the accident, and thought it was all safe.
Q. It didn't cause any alarm?
A. No, sir.
38 Q. If it had, of course you would have made the necessary suggestion?
A. If I had not thought it was all safe I would have made a suggestion and had a change made.
Q. But you did think it was perfectly safe?
A. Yes, sir.
Q. And the accident was a surprise to you?
A. Yes, sir.

Redirect examination by Mr. HINE:

Q. Well, now, Captain, I want to ask you what became of that rope. You say you took it away; let us find out what became of it.
A. I had it put away on one of the boats. I had it taken off the dock.
Q. In what condition did you find the rope? What kind of rope was it—this single rope that was used for this dead-fall?
A. I think it was taken off the topsail of the "Lake," perhaps.
Q. Was it a new or an old rope?
A. Oh, an old one.
Q. Was it a new and substantial rope or a miserable and rotten rope?

Mr. WILSON: Oh, no; I object.

A. Well, the portion of it that worked through the block and fall was all right, perfectly right and sound; but after I examined it—I examined the ends where it broke—and three or four feet from where

it was fastened it was all dry-rot, so that I could pull it out ten or twelve feet. It was all dry-rot, which will get on any rope used on a boat.

Q. A person using proper judgment in such a case would test such a rope, wouldn't he?

A. Yes, sir.

Q. If he wanted to use it——

A. (Interposing.) If he is going to use it to secure anything he would test it.

Q. If a person had tested that rope wouldn't he have discovered that dry-rot?

A. Yes, sir.

Q. So that the rope would have been tested by a person
39 using proper judgment, putting it up alone; and, if tested, it would have been discovered to be bad?

Recross-examination by Mr. WILSON:

Q. When you saw that there was only one rope instead of those that had been there you didn't tell anybody about it and suggest a change?

A. No, sir; not at the time.

Q. You didn't make any mention of it?

A. No, sir.

Q. Because you thought it was all safe?

A. Yes, sir—at the time. I did not examine it closely.

Q. What was the size of that rope?

A. I guess an inch and a half.

Q. Well, the rope was the same rope that was there when these men went to work?

A. I think it was.

Q. There hadn't been any change during the time they had been painting?

A. No, sir.

By Mr. HINE:

Q. Well, this accident happened the first day they had been painting there, did it not?

A. That I cannot tell. I do not remember how long they had been painting.

Q. Didn't the accident happen the first day that they had been painting?

A. That I could not state.

At this point, 3 o'clock p. m., the court is adjourned until Monday, November 20th, 1882, at 10 o'clock a. m.

MONDAY, *November* 20, 1882.

The court met pursuant to adjournment.
Present: Respective counsel.

JAMES R. GATCHELL sworn on behalf of the plaintiff.

Examined by Mr. HINE:

Q. Mr. Gatchell, in 1881 you were a resident of this city?
A. Yes, sir.
Q. And had resided here for how long?
40 A. I have been here, off and on, for fifteen years.
Q. Do you know George W. Hall?
A. Yes, sir.
Q. How long have you known him?
A. I have known him, I guess, sir, for fourteen years.
Q. You resided in the same part of the city?
A. Yes, sir.
Q. What is your business?
A. Painter by trade, sir.
Q. You had something to do with the Inland and Seaboard Coasting Company in painting the Moseley some time last winter, I think?
A. Yes, sir.
Q. That was, painting the name on the wheel-house, I believe?
A. Yes, sir.
Q. Was Mr. Hall engaged with you in that work?
A. He was; yes, sir.
Q. Well, now, will you state to the court and jury the circumstances of your employment and the circumstances of his employment?
A. On the day I was doing this work I was down at the Inland and Seaboard Coasting Company, at its wharf on Sixth street, and Mr. Davis, the superintendent at that time, told me he wanted me to put the name of the Moseley on the side. It had been injured by the flood caused by the breaking of the ice. I said, "All right." He said, "I wish you would get her up as soon as you can; I want her to go out Monday." I said, "I will do it at once, and I will take George"—that is, Mr. Hall—"to assist me, and it will be done much sooner." He said, "I don't care who you get." I do not remember what he said, but something like that, as if he didn't care, and I got George to assist me.
Q. Was George with you when you were talking with Mr. Davis?
A. No, sir.
Q. Was he with you at any time?
A. He went on the wharf with me.
Q. Where were you talking with Davis about it?
A. That I could not say—whether on the wharf or on the boat. I was back and forth two or three times.
Q. But at the time you were talking with Davis in reference to this George was either on the wharf or on the boat?
41 A. Yes, sir; he was talking with another friend of his.
Q. Well, go on.

A. I went to work on the side of the Moseley, and I think I was about half done. There was a side of the warehouse which had been crushed in——

Q. Warehouse or wharf?

A. Warehouse.

Q. A side of the shed.

A. Yes, sir; it had been crushed in, I guess, by the Moseley coming up against the wharf; it was crushed in at the bottom and the girding beam at the top had been broken in two places, I believe, and was fastened with a rope. We went to work there, and had gotten about two-thirds through when this piece came down on us. As soon as I heard the crash I went down, threw my head this way (indicating), and so saved myself, I think, and as I went down I heard him halloo. He fell almost right under me; at least on one side, and I kept in that position, and I could not lift it off and could not get any lower, and I saw the blood gush from his mouth and nose. I thought he was killed, and called for the hands, and they came and carried him into the office. A doctor was sent for and I got a carriage and took him off.

Q. The Moseley was lying by the side of the wharf?

A. Yes, sir.

Q. Now, let us see if we have the location. How did you get to the wheel-house to paint?

A. We laid some little boards to the guards. The boards were laid lengthwise this way (indicating).

Q. The Moseley was fastened to this wharf?

A. She was; yes, sir.

Q. State what it was that gave way.

A. Well, the whole side of the warehouse or wharf—the whole side of the enclosure; I suppose it was a section; I should judge about 25 feet; probably a little more; I didn't pay particular notice; I was too much excited to take much notice of it.

Q. It was the covering to the wharf?

A. Yes, sir; the upright sides.

Q. Do you remember how many posts supported this side that gave way.

42 A. I did not notice any supports of any kind, except I noticed a rope running from the top of the shed; I noticed that particularly.

Q. Well, there were standards or posts up from the wharf proper to hold this shed, were there not?

The WITNESS: You mean originally put there or temporarily?

Mr. HINE: Well, originally or temporarily.

A. Originally standing; yes, sir.

Q. Well, how were they?

A. Well, there was only one, I believe, that fell out with the section onto us.

Q. Only one, as far as you recollect?

A. Yes, sir.

Q. Well, before that fell out was it perpendicular or otherwise?

A. Not exactly perpendicular; it slanted in as if it had been broken in at the bottom.

Q. You didn't notice it specially? (After a pause:) You went there and did your work and George went with you?

A. Yes, sir.

Q. Now, will you state more particularly any injuries George received there?

A. Well, he had his cheek-bone crushed in and his jaw dislocated at the time; his cheek-bone is crushed now; the doctor said his jaw was dislocated.

Q. Did you take him off?

A. Yes, sir; I took him home in a carriage.

Q. How long did you remain with him?

A. I guess I was with him three weeks.

Q. Off and on?

A. Yes, sir. I was with him all that night.

Q. You were with him all that night?

A. Yes, sir; and the next day and the next night.

Q. Was he conscious?

A. It did not appear to me that he was conscious. He did not try to speak to me at all until that morning. I offered to get him some medicine and he tried to say something to me. I could not understand it, and I said, "George, don't talk;" the doctor wouldn't allow it; the doctor told me not to encourage him to talk if he tried it.

Q. You stayed with him right along for several weeks?

A. Yes, sir.

43 Q. What was his condition of health and general spirits before this injury?

A. Well, his health was always good. I have never known him to be sick while I have known him, and as for spirits he has always been very lively.

Q. Is he married?

A. Yes, sir.

Q. Any children?

A. Four, I think, sir.

Q. Does he depend upon his own labor for supporting himself and family?

A. Yes, sir.

Q. You have been away a time?

A. I have been away a year last June—a year and five months.

Q. Then you were here three or four months?

A. After the occurrence; yes, sir.

Q. Well, now, during that four months that you were here immediately after the injury what was the condition of his health, as you observed him?

A. As I noticed him he was not the same man at all that he was before that. He never used to go out with me after that as we did before—never went out to places as we did before that; he lost interest entirely; did not want to go to any places of amusement at all;

did not seem to be the same fellow. I wrote to him several times, but he never answered any of my letters.

Q. As to his ability to work during that four months?

A. As to his ability to work I do not know anything, but as to strength he was not anything like as strong.

Q. Well, now, you were away for nearly a year and a half?

A. Yes, sir,

Q. Please state to the court and jury how you found him when you returned, in comparison with his condition before this injury.

The WITNESS: In comparison with the way he was before he was hurt?

Mr. HINE: Yes, sir.

A. He is entirely a different man; nothing like he was before, not only in his looks, but in his actions, and as far as strength is concerned——

Q. He is not so strong as he was, physically?

44 A. No, sir.

Q. And his general condition of health is largely impaired?

A. I think so; yes, sir.

Q. He was a steady workingman before, was he?

A. Yes, sir.

Q. At the navy yard, model-maker?

A. Yes, sir.

Q. He seems to be employed there now. Do you know anything about that?

A. Yes, sir; he is employed there now,

Q. You do not know anything about it, except what you have been told—hearsay?

A. No, sir; except what they say.

Cross-examination by Mr. Wilson:

Q. How did you happen to be at the wharf that day?

A. Well, we started down town—George and a friend of mine—to go the matinee, the theatre, and I said "Let us go down to the wharf," and in that way we happened to be down at the wharf.

Q. You had no particular business there?

A. No, sir.

Q. Had you been in the habit of going down there?

A. Yes, sir; I spent two-thirds of my time there.

Q. Doing what?

A. Sometimes I was working; sometimes I was not.

Q. A sort of general——

A. (Interposing.) "Hanger-on;" yes, sir.

Q. Well, was George in the habit of going there too?

A. No, sir; he did not go there very much. Sometimes he would go down with me.

Q. You went there that day without any particular business?

A. No, sir; no particular errand or business.

Q. What time did you go down there?

A. Well, as near — I could recollect—I wouldn't like to say for certain—about 9 o'clock; probably a little after that.

Q. What time did you begin to work?

45 A. Well, probably half an hour or three-quarters after that.

Q. Where were you?

A. On the wharf.

Q. Was George with you?

A. Yes, sir.

Q. You took the job to get some money to go to the theatre?

A. Yes, sir.

Q. Had you made a bargain as to what you were to receive?

A. I did not make any bargain with Mr. Davis.

Q. Whom did you make a bargain with?

A. With George.

Q. Didn't you make a bargain with Mr. Davis as to what you were to receive?

A. No stipulation of price.

Q. How were you to be paid?

A. After we were done.

Q. How were you paid?

A. After we were done, I think, I got $1.50 or $1.75; I got George to go down, and he said: "If I help you will you give me anything?" I said: "Yes, I guess I will stake you." I said that I would give him half we got.

Q. You got $1.75?

A. Yes, sir; I think I gave him 75 cents.

Q. Then you didn't give him half?

A. No, sir; (laughingly) I think I got $1.75.

Q. Did you finish the job that day?

A. I wouldn't swear to that; I was very nearly finished when the accident occurred; I won't say whether I finished it that day or not; I think I came down the next day—Sunday—and finished it.

Q. This happened on Saturday, and you think you finished it on Sunday?

A. I think I did; I won't be sure, for I was pretty badly scared for the next couple of days.

Q. How long was it after you had gone to work that the accident happened?

A. We probably had been working nearly two hours—all of it.

Q. Then it was nearly in the middle of the day, about 11 or 12 o'clock.

46 A. Yes, sir.

Q. How did you go onto the boat from the wharf?

A. I went onto the scaffolding; we were working on a single plank laid out to the scaffolding.

Q. What supported the scaffolding?

A. Little beams running under the guards of the boat—running between the guards and the wharf; they were put there to let the water through the wheels.

Q. They were put there to let the water come out?

A. Yes, sir.

Q. Under the guards?

A. Yes, sir.

Q. And you made a platform of one single plank?

A. Yes, sir.

Q. What was the condition of the wharf?

A. Well, the wharf was in a pretty bad condition; at that side it was bulged up in several places. The flooring and the upright sides of the warehouse had been crushed in, and it made it naturally lean out towards us or towards the steamer. It had been sawed off in two places, and the rope I noticed had been placed across the top.

Q. One rope?

A. That is all I noticed.

Q. Did you see the rope after it had been broken?

A. I did not; no, sir.

Q. Was the beam that fell—this cross-piece—a "sill," I suppose you would call it?

Mr. HINE: O, no; "cross-piece."

Mr. THOMPSON (to Mr. Wilson): Upper plate.

Q. Well, "upper plate," how will that do? (After a pause.) This upper plate fell against the side or the wheel of the boat?

A. Yes, sir.

Q. Did it crush it in?

A. No, sir; not much; it scraped down it.

Q. How did it fall?

A. It came down flat, and part rested on the wharf and part on the guards of the boat and hung over the water.

Q. Could you tell what it was that hit Mr. Hall?

A. The side hit him.

Q. Well, if the cross-piece had struck him it would have killed him?

47 A. Well, the boards were attached to that. This was the side of the warehouse and the boards were nailed to that and to the bottom part (indicating).

Q. You are sure the boards were all nailed to the side?

A. Some might have been taken away, but there were some there yet.

Q. You saw all this when you went to work—the condition of the wharf?

A. Yes, sir.

Q. Had you been there several times?

A. Yes, sir; several times.

Q. And you knew what caused it?

A. Yes, sir.

Q. They had been working up above?

A. Yes, sir.

Q. The steamboat itself had been repaired, hadn't it—the side of the wheel?

A. Yes, sir; she had two boards put in the side of the wheel; probably more than that?

Q. The side of the wheel?

A. Yes, sir.
Q. Then you were painting partially on new work?
A. Yes, sir; partly.
Q. Did you do the painting or the lettering?
A. Only the lettering.
Q. Somebody had done the painting?
A. Yes, sir.

Redirect examination by Mr. HINE:

Q. You had known Mr. Davis, the superintendent, some time, hadn't you?
A. Yes, sir.
Q. You did a good deal of work around there painting?
A. Yes, sir; I did at that time.
Q. And he just told you to go to work; there was no agreement as to price?
A. No, sir; there was no agreement.

Mrs. EMILY CHASE sworn on behalf of the plaintiff.

Examined by Mr. HINE:

Q. You are a resident of the city?
A. Yes, sir.
48 Q. And have resided here how long?
A. A year before the rebellion.
Q. George is your son?
A. Yes, sir.
Q. Now, Mrs. Chase, do you recollect an injury that he received some time in February, 1881?
A. Yes, sir; I remember it very distinctly.
Q. What was the condition of his health before that?
A. Very good indeed.
Q. Steadily working?
A. Yes, sir.
Q. Whereabouts?
A. In the navy yard.
Q. What was his business?
A. Pattern-maker.
Q. And his wages were how much?
A. At that time they were either $2.75 or $3, I am not positive which.
Q. Steadily employed there had he been for how long?
A. Since he was fourteen years old.
Q. How old is he now?
A. Twenty-six.
Q. So that he was twenty-four and past then, and had been employed there for ten years, steadily?
A. Yes, sir.
Q. Now, will you state to the court and jury—I suppose you know nothing further about the injury than that he was brought home?

A. I did not see him until the next morning, Sunday morning.
Q. He is married and had a family of his own?
A. Yes, sir.
Q. And lives with his family?
A. Yes, sir.
Q. The next morning you were notified of the accident?
A. Yes, sir; his mother-in-law came to me early Sunday morning.
Q. You went to see him?
A. Yes, sir; immediately.
Q. Will you state his injury as you observed it?
A. I found him lying in bed; his head and face very much swollen, one eye nearly closed and the other black; he could
49 hardly see out of either of them; he could eat nothing except beef tea or something like that, and was unable to talk very much.
Q. Could you make out what he said?
A. By getting very close to him.
Q. Well, his head was swollen, was it?
A. Oh, yes; it was nearly the size of a basket. A person who had known him before the injury would not have recognized him at all.
Q. All disfigured?
A. Yes, sir; all disfigured.
Q. The injury appeared to be where?
A. On the left side of his face, if I recollect right. His jaw-bone was injured, and here (indicating) was a great bunch.
Q. His face was swollen?
A. You could not tell where it was exactly.
Q. Before that what was his general condition of health?
A. Very good.
Q. Ever sick?
A. No, sir; he had never had any severe sick spells. When he was six years old he had gastric fever and when he was fifteen years old he had cholera morbus. Those were his only sick spells.
Q. Nothing else?
A. No, sir.
Q. How long was he confined to his room; do you recollect?
A. As I recollect, it was nearly six weeks before he could get out.
Q. Do you recollect the date of the injury?
A. Yes, sir; it was the 20th of February that I was sent for.
Q. That was the day after the injury?
A. Yes, sir.
Q. The 20th of February, 1881?
A. Yes, sir.
Q. Six weeks would bring it down to the last of April some time?
A. Yes, sir.
Q. Then did he go to work?
A. Yes, sir; but——
Q. (Interposing.) Under what circumstances?
50 A. Well, his family needed his money. My husband was his boss, and I got him to put him to work at a light job.

He went to work really before he was able to. The sight of the left eye had not returned, and there was danger of dust getting into his eye and his losing it altogether.

Q. How steadily has he been able to work since then?

A. Pretty steadily. At first he had to leave work some time on account of his head troubling him; at first he lost a good deal of time on account of his head.

Q. And latterly has he lost considerable time or not?

A. Well, he has lost, off and on, a good deal of time. I do not know exactly how much.

Q. He is in employment when he is able to work?

A. Yes, sir; he was an apprentice there; he learned his trade.

Q. And since then has he been steadily employed?

A. Yes, sir.

Q. What does he do with his money?

A. For his family; he has a sick wife and four children.

Q. Passes it right over to them, does he?

A. Yes, sir.

Mr. WILSON: Well, I do not know that that is material.

Q. Well, that is the only means he has of supporting his family—his daily labor?

A. His daily labor; yes, sir.

Q. Well, now, Mrs. Chase, will you advise the court and jury what has been the condition of his health and spirits since this accident?

A. Well, since the accident I have discovered an entire change in disposition. He is at times very irritable, sometimes cross.

Q. What has been his condition of health?

A. Well, he has complained of headaches; that has been most of his sickness—severe headaches.

Q. That has followed clear away down to the present time?

A. Yes, sir.

(Cross-examination waived.)

Mr. HINE: That is our case, your honor.

Mr. Wilson here opened to the jury on behalf of the defendant.

51 *Evidence for Defendant.*

WILLIAM THOMPSON sworn on behalf of the defendant.

Examined by Mr. WILSON:

Q. Mr. Thompson, you were the president of the Inland and Seaboard Coasting Company in February, 1881?

A. Yes, sir.

Q. Will you be good enough to describe the condition of the wharf at the foot of 6th street on Saturday, the 19th day of February, 1881?

A. Well, the wharf, in the first place, known as 6th-street wharf, is probably 87 or 88 feet wide and 150 long. The main part of the

warehouse is covered by a warehouse or board shed. The sides of the wharf have several large openings in them where the boats land for the purpose of loading and unloading freight. Some time before this—the 19th of February—I might state, there were four of our steamers at this 6th-street wharf. The "Jane Moseley" was at the north side and the "John W. Thompson" was fastened at the south side. The steamers "John Gibson" and "Lady of the Lake" were at the end, all frozen in and completely ice-bound. The freshet came along; the two outer boats had their crews on board, and had been keeping up a full head of steam, when along came this freshet and caught these two steamers at the head of the wharf, which were under a full head of steam, and snapped their hawsers, and they were carried off and landed in the mud some distance from the south side of the wharf. It struck the "Jane Moseley" and it brought her guards up against the timbers of the wharf and crushed in the timbers of the shed in every direction, and thrust the wheelhouse inside the wharf a good many feet. In that condition she remained until the water began to lower and subside. Then they went to work and pushed her off, and these timbers at the side of the wharf were in a broken condition, as well as the side of the boat. The flooring of the wharf and other parts had been broken off by the ice coming against it, and the wharf was very much damaged in every respect, as well as all the steamers that were around the wharf at the time.

52 Q. State whether that part of the wharf where the "Moseley" lay was intended to be used by the public at all, for any purpose at all.

Mr. HINE: That is immaterial; it doesn't make any difference at all so far as this case is concerned.

The COURT: Well, he might as well finish the description.

A. It was the side of the wharf where the boats discharged freight and unloaded passengers; there was no one there except the workmen repairing the side of the wharf and the damages that had been done by this freshet.

Q. Under whose immediate direction was this part of the wharf placed with reference to the repairs and putting it into a safe condition?

A. Well, there were workmen there—carpenters.

Q. Who were they?

A. I do not know their names.

Q. Who had charge of them?

A. Well, the superintendent was there as well as the captains of the boats, the pilots, and engineers of the boats; they were all there repairing the damages and getting their steamers ready for service; they were making repairs, clearing away debris, and doing service generally; the crews and pilots were there and helped in the repairs and getting the boats ready.

Q. Who fastened up this sill or this plate or cross-piece?

A. I did not see him. I understood it was the mate of the steamer John Gibson.

Q. Who was that?
A. Mr. Savage.
Q. How long has he been in the employ of the company?
A. I think four or five years—probably not that long.

Cross-examination by Mr. HINE:

Q. You are president of the company?
A. I was acting president of the company at the time.
Q. How long was this freshet that came down from Long Bridge with such disastrous effect upon all your boats before this injury to Mr. Hall?
A. If I recollect aright, it was on Saturday, the 12th; and as I recollect the injury occurred on the following Saturday, the 19th.
53 Q. Seven or eight days?
A. Yes, sir.
Q. Men had been at work fixing up the Moseley before this time, repairing it?
A. Yes, sir; the carpenter and joining work had been done, and the painting had been done, I think.
Q. Well, now, getting right down to this portion of the wharf that fell down, or shed, you say the boat crushed in the side of the wharf or shed?
A. Warehouse or shed.
Q. And that was fastened in some way? Now, as to the standards that were put up there to fasten or hold the roof up?
A. I cannot say who did it; it was put up under the direction of the men in charge there.
Q. Were they put up straight or slanting?
A. They were put up straight, sir.
Q. Were they not inclined in that way (indicating), so as to give the men a chance to work around?
A. No, sir; the two pieces that were under this plate which belonged to the side of the shed proper had been crushed in, but those girders remained there. Those pieces may have been slanting, but there were pieces of timber put across the rafters to support the rafters that were resting across this plate. Now, the pieces that were put across the rafters to support this plate were put in there and wedged in.
Q. How far apart?
A. I do not know; probably 18 or 20 feet; they were put in to support the rafters.
Q. Well, these standards, or the old posts, had been crushed in two or three feet?
A. Yes, sir; at the time.
Q. Did they remain there to perform their office of supporting the roof?
A. Yes, sir; they were not taken away; they remained there because——
Q. (Interposing.) Well, now——
Mr. WILSON: Well, go on and state your reasons.

Mr. HINE: No; let him state facts. His reasons are not material—that is, for the jury.

Mr. WILSON (to the witness): Go ahead, Mr. Thompson.

54 A. The lower sill, the foundation on which those pieces rested, had been torn away. They could not be put up straight, because there was nothing to fasten them on, and therefore these pieces were put two or three feet back in order to sustain these rafters.

By Mr. HINE:

Q. Well, now, in relation to these uprights, which you say were probably 18 feet apart. In addition to these uprights or posts what other appliances did you have to hold the roof in its place?

A. This rope that was placed there and fastened on this beam to keep it straight and steady.

Q. Well, now, there were three or four ropes placed there to hold this roof in position, were they not?

A. That I do not know.

Q. You were down there, were you not, all the time?

A. No, sir; not all the time. I would probably go there two or three times a day after the freshet occurred.

Q. Well, you know that there were three or four or five ropes placed there after the freshet to secure this roof?

A. That I do not know.

Q. Did you notice any?

A. I noticed this one.

Q. You did not notice whether there were four or five?

A. No, sir; I did not notice particularly at all.

Q. Well, do you know anything about any of these ropes having been taken away?

A. No, sir; I do not.

Q. You never noticed that any of them were gone?

A. No, sir.

Q. Well, these props were put up, and these props were placed there a week or so before this painting was done?

A. Yes; I imagine that those props were put there a week or so before.

Q. Well, you know that those standards were put up and the ropes were put there a week or more before?

A. Yes, sir; the standards were put up, and there was a force of men at work there

Q. You do not know anything about this occurrence?

A. No, sir.

Q. Your recollection is that those ropes were placed there about a week before this accident occurred—or this painting?

55 A. The ropes were placed there when the steamer was carried off. After the steamer crushed the wharf this plate or sill rested on the steamer. When the steamer was pushed off these props were put there to keep the roof up.

Q. These ropes were put there at that time?

A. Yes, sir.

Q. Were the ropes in plain sight?

A. Yes, sir; so plain I remember distinctly stepping under it when I passed on the wharf.

Q. Well, there were several of them, were they not?

A. That I do not remember.

Q. You do not remember whether you stooped down and passed four or five?

A. No, sir.

Q. Do you know when the "Gibson" sailed?

A. I think on the 19th.

Q. The day of this injury?

A. Yes, sir.

Q. Mr. Savage was mate of the "Gibson?"

A. Yes, sir.

Q. It is stated here that he took away several of his ropes on the day the "Gibson" sailed. Do you recollect anything about that?

A. No, sir; I do not.

Q. Well, now, Mr. Thompson, how is it that you cannot state—it is a matter more of argument than a question, perhaps, it is true, but I will give the witness an opportunity to answer the question—how is it you cannot state whether there was one rope or five ropes placed there to hold up the roof?

A. When the boat was pushed off these standards were placed there.

Q. You never noticed them before this piece of the wharf had fallen down, these standards?

A. These standards were not put there until after the damage was done.

Q. I mean the injury on the 19th of February. You did not notice these standards or know how they were fixed—did not pay attention enough to that to know how they were fixed until that portion of the wharf had fallen down?

A. Oh, the standards were there, and I noticed them the time they were getting the ship off.

Q. How many did you see there?

56 A. Two.

Q. How large a portion of this shed or roof fell?

A. None of the roof fell, only the frame-work of this plate. The upright posts had been boarded in with boards, and the debris had been carried away.

Q. When did you hear of this injury?

A. That afternoon, at the office.

Q. Did you go around to see him?

A. No, sir; I do not know that I did.

Q. You had no interest in that?

A. You need not say that.

Q. You did not go around to see him?

A. No, sir.

Q. Did you send any one around?

A. No, sir; the superintendent who was there told me he had been properly taken care of.

Redirect examination by Mr. WILSON:

Q. Mr. Thompson, all this arrangement was temporary that you have spoken of, where the roof had been broken in and standards put up?

A. Yes, sir; until we could get the timbers prepared to hold the roof up.

Q. Were they being prepared?

A. Yes, sir; the carpenters were at work preparing them.

Q. What, if any, notice did you, as president of the company, receive as to that being unsafe?

Mr. HINE: That is immaterial.

A. None at all.

ELI J. SAVAGE sworn on behalf of the defendant.

Examined by Mr. WILSON:

Q. What is your occupation?

A. Seafaring life.

Q. What is your present occupation?

A. Going to sea.

Q. On what boat?

A. Steamer "John Gibson."

Q. How long have you been going to sea?

A. Going on thirty-three years.

57 Q. Do you remember what occurred on or about the 19th day of February, 1881, or a few days before, in relation to the "Jane Moseley" and her position on the wharf, the breaking of the wharf, and the repairing or temporary repairing of the wharf?

A. I do, sir.

Q. Will you state, if you please, what you did with relation to the state of the wharf where the "Moseley" lay, and what measures you took to protect it and keep it in place?

The WITNESS: The portion that was sawed away, cut away, or broken?

Mr. WILSON: Yes, sir. Just describe the situation, if you please. How did you happen to be there?

A. Well, sir, the way that happened there was we were frozen in the ice down the river, and the "Lady of the Lake" and the "Thompson" assisted us up the river. It took thirty-six hours to get up to Washington. We could not get up higher, and we were forced to put up at the Sixth-street wharf.

Q. Were you there when the ice broke?

A. Yes, sir.

Q. State what happened.

A. When the gorge gave way at the bridge we had on a full head of steam, and had had a full head of steam on for forty-eight hours. We worked the ship's engines for six hours, but could not hold on to the edge of the wharf with four hawsers. They were hawsers of 6½-inch manilla rope. The ice broke against the deck and the deck-

plank fell probably fifteen or twenty feet in the air, shaking the dock so as to shake the shed. The "John Thompson" and "Lady of the Lake," which were at the wharf, were carried with the ice around here (indicating). At the same time the "Jane Moseley" was carried by the ice against the wharf, crushing in the bottom part of the shed, bringing her guards, as I should think, all of three feet over the wharf, and putting her wheel up against the wharf. After we had done all we could to save the "Lady of the Lake" and the "Thompson" where they were by the arsenal shore—the Washington side of the channel—we went out to rescue the "Jane Moseley" from damage if we could. Mr. Davis and the ship's crew and myself worked for three days and nights to save the "Jane Moseley;" just stopped
58 long enough to eat our meals and got no sleep in order to get the "Jane Moseley" safe. We carried two chains—one forward and one aft—to Mr. Emery's wharf, this side of the company's wharf, and then we took a few blocks and falls. After getting the "Moseley" out we broke the ice out from around her. Her water line was a little out of the water. This was to protect her guards. The water would evidently fall after the gorge gave way; and in order to protect her guards we got new ropes that we had, and we got what we call shores and pieces of timber and fastened one end against the dock and the other end against the ship's guard. If you will allow me a pencil, Mr. Wilson, I will explain it to you.

(The witness is here given a pencil, and he illustrates to the jury.)

Mr. Davis, the superintendent, asked me to take charge of the work. He thought I was better versed than he was, and I said I would do it. He said, "Your men will do more for you, probably, than they will for me," and so I took hold of it. We put these shores there, and I will say there, for instance (illustrating), is the rope extending from the eaves of the building on and top. In order to do it I had to put away these rafters that the shingles are nailed to, say, about three feet. Then I cut the plate, as I call it, forward and aft of her paddle-box about four feet. I then lifted off all the boards on the side of the building that I cut the splices into, but before doing that I got two blocks and falls and put them onto the rafters at each end, and put stretchers around each plate so as to hold it, and then I knocked off all the boards. Then I brought the top back here (indicating) probably about six feet onto the wharf suspended by these blocks and falls—supported by these blocks and falls, that giving a chance to work the "Jane Moseley" and drive her away from the dock. After getting the "Jane Moseley" from the dock I brought back this piece that I had cut away from this plate, and two posts (they were in their centers, not broken off) that I had cut off here a little bit below, which were remaining stationary, and carried the foot of this standard (indicating) to within about a foot of their place and left it, in order that when the carpenters got ready to go to work they could shift the bottom of this standard into its place. The carpenters never got through before I got the ship ready,
59 and we had to wait at the wharf for the carpenters to get

through repairing the damage done to the ship by the freshet. So on the 19th I took off the blocks and falls, but before taking them off I took a three-inch manilla rope and put lashings around. We will say there, for instance, is a fall on the stationary part of the building which is not cut off, and this is cut off (illustrating). I made four turns with the rope around that part of the plate and five turns around the other end (indicating) sufficient, I should say, to hold six tons weight. Then I took my blocks and falls off and carried them on the ship. Mr. Davis gave me a 3¼-inch bran new rope that had never been used. That was put on the center of this plate and made fast to a post of the building, and a block and fall across the building and hooked into, so that he could haul it up if he wanted to, or slack it up and let the carts go by. That was in addition to this new rope, and on the 19th we sailed from the dock in the afternoon.

Q. Why did you tie up this post here (indicating) instead of letting it rest down on the floor of the wharf?

A. Because it was nearer its position. All the carpenters had to do was to carry it up.

Q. Was the lower portion of the wharf broken in?

A. Yes, sir.

Q. And, as I understand it, you got out that top piece (indicating). How long was that?

A. About forty feet long; a little over that, perhaps less, but say forty feet.

Q. And you used a tackle and fall on each end and tied it up?

A. To stay it back; yes, sir.

Q. To keep it in its place?

A. Yes, sir.

Q. Now, at that time did you put a rope in the center and bring it out on the wharf?

A. Yes, sir; the rope Mr. Davis gave me out of the store-room—3¼ manilla rope.

Q. What change was made, if any, to weaken the supports of that building after you first put them up? In taking away your falls, state whether that weakened it.

A. No, sir; because these two standards or posts were secured by blocks. They were blocked around with blocks eight inches long that I brought off the ship.

60 Q. When was that done?

A. That was done on the 18th. Mr. Davis had that done when the sailors were putting the lashings onto the shed.

Q. What care was exercised in doing that?

The WITNESS: What interest did I take?

Mr. WILSON: State whether you thought you had taken proper care in the matter.

A. I took all the care a man could take for the good and welfare of everybody.

Q. State whether it was made strong or weakened after you had done this?

The WITNESS: In putting the lashings on and taking the fall off?

Mr. WILSON: Yes, sir.

A. I should say it was four times stronger.

Q. Then there were just as many ropes on the 19th as there had been any time before?

A. There were just as many as there had been at any time.

Q. And the rope that came down from the center and was fastened to—what was it fastened to?

A. To a post that went off into the center of the building.

Q. What was that for?

A. To assist the center of this post that I had put in. I put that on before I put the lashings on the end. I told Mr. Davis I would put lashings on each end of them to help assist it, which I did also.

Cross-examination by Mr. HINE:

Q. You were mate of the "Gibson," were you not?

A. Yes, sir.

Q. Did you have charge of the vessel?

A. She was in my charge there. When the captain is home the first mate is always there to be in charge of the vessel.

Q. When the captain is ashore.

A. Yes, sir.

Q. Who was the captain?

A. Captain George Young.

Q. Where was he?

61 A. In Alexandria.

Q. He didn't come up during all this time?

A. He came up as soon as he heard of it, so he says.

Q. Mr. Davis, as I understand it, placed this ice-gorge on the 12th. What is your recollection?

A. I wouldn't say positively; I could not, but my opinion is that the ship broke loose from the dock on Saturday.

Q. That was how long before this injury to Hall on the 19th? Let me call your attention; it was Saturday when Mr. Hall was injured.

A. That I could not say.

Q. No; I am telling you so in order that you can fix your date. He was injured on the 19th of February, it is admitted. How long before that was it that you were struggling with your boats in the river, when you were struggling and getting your boats up the river?

By Mr. WILSON:

Q. When did your boats break loose?

A. I do not remember whether it was the 10th or the 11th; it was on Saturday. I could give you the hour, sir, if I had my log here.

By Mr. HINE:

Q. You had been lying with the "Gibson" at this wharf how long before you got away on your voyage?

A. I think it was just a few days before Christmas or a few days after Christmas that we reached Sixth-street wharf, and we got away from the Sixth-steet wharf on the 19th of February?

Q. Then you were lying there from Christmas until the 19th of February, except during the interim that you were carried away by the ice-gorge?

A. Yes, sir; we were at the Sixth-street wharf until the gorge broke us loose?

Q. After you resumed your position at the wharf subsequent to the ice-gorge, how long had you been lying there before you left on the 19th of February?

The WITNESS: After we had gotten back to the wharf again?

Mr. HINE. Yes, sir. How long did you lie there before you left on your voyage?

A. Three or four days before we finished loading ship at the end of the wharf.

Q. Then you lay at the end of the wharf long enough to get your boat in position and to load it?

62 A. Yes, sir.

Q. What did you load it with?

A. We had flour and guns and ammunition for the United States arsenal.

Q. Large guns?

A. No, sir; small arms—muskets, pistols, and ammunition.

Q. You had to take in considerable quantities of coal?

A. Yes, sir; we took in some; we used so much on account of lying there expecting the freshet to give way.

Q. How much coal did you take in after returning to the wharf and after you departed?

A. That I could not tell; we filled our coal-bunkers.

Q. One hundred or two hundred tons?

A. No, sir; forty tons will run us to New York and back.

Q. You took in from twenty to forty tons?

A. I could not tell you, sir.

Q. You took in a load of flour and small arms?

A. Yes, sir.

Q. That was taken from the wharf after you got back?

A. Yes, sir; that was put into the ship; we had to discharge some of it in order to get off the shore; a part of it remained on the "Gibson," a part was put on the wharf, and a part was on the "Lady of the Lake" and "John Thompson;" a part of it was taken off, and after we got off it was all placed back.

Q. That was all placed back and loaded on your boat, the Gibson, after you had fastened this segment of a shed, was it not?

A. After supporting it by blocks and falls there was very little put on the wharf; most all of it remained on the Lady of the Lake and John W. Thompson—pretty much all.

Q. When you first fastened this rope upon the roof of the shed, or wharf, or warehouse, after you fixed it up, was it secure enough so that carts went back and forth over it?

A. No, sir; they didn't go over that portion, because it was standing upright nearly.

Q. What portion?

A. Why, the roof.

Q. What relation does the shed bear to the floor of the wharf?

63 A. It is on top of the wharf.

Q. I thought I asked you if they went over the wharf. I didn't mean to ask you if they went over the roof. (Laughter.) Did they go outside the shed and over the wharf?

A. The carts had to pass through the middle of the shed and in the middle of the wharf.

Q. You do not know how much of this shed fell down?

A. It didn't any of it fall down, because I fastened it by blocks and falls.

Q. Well, did it fall down on the 19th?

A. Well, it didn't fall while I was there. What happened after I left I don't know anything about.

Q. How many ropes did you pass over this plate, and how many standards or posts did you put up when you first put them up?

A. Nothing but the fore sheet and the jib sheet.

Q. Well, according to my recollection of what you remember about it, the original posts were driven in in that way (indicating), so that the base of the posts was shoved in about six feet?

A. No, sir; not over three feet.

Q. Well, carried in three feet; I misunderstood you. What became of this original plate, the plate that was there when the posts were driven in?

The WITNESS: Before it was sawed in two?

Mr. HINE: Yes, sir.

A. The plate remained up there, and these were driven under the dock.

Q. What necessity was there for sawing off the original plate?

A. So as to clear it away to put these shores in there.

Q. Then you didn't put in a new plate, but you sawed off the old plate and carried that back?

A. Yes, sir; carried it nearly into its place, so as to be ready for the carpenters.

Q. This plate that you cut off and carried back—what was the length of the post you sawed off?

A. I should judge somewhere about 40 feet.

Q. How many posts do you recollect were driven in by the Moseley?

A. Three.

Q. One at either end and one at the middle?

64 A. No, sir; the one at one end was broken off, and the other two were firm in their places; that made two plates in addition to the one I sawed off.

Q. Now, when you carried this segment of 40 feet back 6 feet did you put in any new standards or posts?

A. I did before sawing the rafters off. I took a piece of timber I

should say 30 feet long—might have been 35—and placed it underneath the rafters so (indicating), and put two rafters in about 20 feet apart before sawing off this plate, so that the roof could not come down.

Q. Now, when you first fixed this, about a week before the injury to this young man, when you first fixed this roof, how many ropes did you attach to this new plate?

A. I had a block and fall at each end of it.

Q. You did not have one in the middle?

A. No, sir; not then. Before taking these blocks and falls off I put one in the middle.

Q. When you first fixed this you put a block and fall at each end. How far was it from each end?

A. Three feet.

Q. Then these blocks and falls were 34 feet apart?

A. Yes, sir.

Q. There were 34 feet, then, between the two stay-ropes that were attached to the plate?

A. Yes, sir.

Q. Now, I understand you to say you put up a new post in the middle?

A. In the middle of the plate.

Q. Then, there was a distance of 34 feet originally that had only two fasteners?

A. Yes, sir.

Q. How large was the plate?

A. Probably 7 or 8 inches square.

Q. Taken out of a whole log, was it, or did you notice that?

A. Probably made out of a whole log, the sides taken off to make it square.

Q. So that there were 34 feet without any support?

A. Except those two posts resting at the top, probably one-third the length of the plate from the end.

Q. Where were those two posts in relation to the end of this plate?

65 A. When I straightened that plate up in the building to get them out of the way they were nearly perpendicular.

Q. The original posts—one was about the centre and the other one not a great ways from the end, probably six or eight feet. Was that one of the original posts?

A. Yes, sir; one of the original posts.

Q. Those were the posts that were crowded in by the boat, all three of them?

A. Crowded in by the boat; yes, sir.

Q. But when you did fasten this plate I understand you to say that you carried that plate back six feet?

A. To give us room to work at the Moseley.

Q. When you attached this block and tackle you also had these standards put up in the middle?

A. I could not say whether they were supporting it then or not, because everything I had on there then was sufficient to hold it—

the ropes that I had on—and therefore I did not pay any attention to the standards or posts at that time.

Q. They remained there about a week?

A. No, sir.

Q. About four days?

A. Somewhere about that.

Q. Well, four days to a week. They were taken off from your boat?

A. Yes, sir.

Q. They were ropes that were needed on your boat, the "Gibson?"

A. They were.

Q. So that when you got ready to sail on the 19th——

A. On the 18th I took them off.

Q. The ice was then comparatively free?

A. The channel was clear, sir.

Q. On the 18th, then, the channel was entirely clear of ice; there was no disturbance there at all at that time?

A. Only the ferry-boats going up.

Q. But the channel of the river was entirely free on the 19th?

A. Of ice; yes, sir.

Q. Well, now, on the 18th, what time in the day was it that you took these two ropes off?

A. I could not say as to the hour, but in the forenoon.

Q. Before 12 o'clock?

66 A. I should say it was.

Q. Before you took those two off you put another one there?

A. I put a more secure one there. I put a three and a quarter inch rope that Mr. Davis gave me and connected with the posts.

Q. In the centre of the forty-foot plate you passed the rope over and onto the other side of the wharf and near the centre of the wharf (referring to illustration)?

A. Yes, sir.

Q. What did it pass over to hold it there?

A. It passed over the plate here, sir (indicating), on the main building.

Q. It was attached to a plate on the side?

A. This was the plate.

(The witness here illustrates the position of the plate and rope.)

Q. It passed over the plate?

A. Yes, sir; it passed over that, and the ends made fast to a post in the centre of the building.

Q. It passed over the building to that post?

A. Yes, sir; maybe an angle of four degrees.

Q. It didn't go over anything and then down?

A. No, sir; it went over the building.

Q. It was attached to this plate and then went down at an angle?

A. Yes, sir; to the post in the centre of the building.

Q. At an angle of 25 degrees?

A. Not over 10, I should think, if that much.

Q. Where did you get that new rope that you put there?

A. I wanted a new rope and Mr. Davis went into the store-room and that was all he had left, and that was put over the centre of it.

Q. Did you test that rope at all?

A. I did — it at all, because it was a bran new piece of rope, sir.

Q. Well, now, does it not happen that a new rope is so rusted by dry-rot that you can twist it by the end and ravel it to pieces?

A. No, sir; I have not seen one in thirty years in that condition; not a new rope.

Q. Have you seen this new rope since?

A. I have not.

67 Q. Well, now, you say that in addition to putting that one rope there you put these blocks around the base or bottom of the posts?

A. Mr. Davis did it with his men.

Q. You think they did that?

A. Yes, sir.

Q. The blocks were placed around the posts to keep them from slipping?

A. Yes, sir.

Q. So that the only purpose of these blocks was to keep the posts from slipping out?

A. They had a tendency to keep them from slipping out.

Redirect examination by Mr. WILSON:

Q. You saw the Moseley fastened to the wharf after you got her off?

A. She was suspended by two chains, her anchor chains, one forward and one aft, with a rope across to Mr. Emery's wharf, and they were hauled taut and made fast to her; her water line was a little above the water.

Q. She was resting on the water, with her water line a little above the water?

A. Yes, sir; resting on the water and ice together.

BENTON C. DAVIS sworn on behalf of the defendant.

By Mr. WILSON:

Q. Mr. Davis, you were superintendent of the Inland and Seaboard Coasting Company in February, 1881?

A. Yes, sir.

Q. Were you down on the wharf on the 19th of February, 1881, and before that?

A. Yes, sir.

Q. Do you know the plaintiff in this case, Mr. Hall?

A. Yes, sir.

Q. How long have you known him?

A. I have seen him, that is all, and by going over to his house.

Q. Do you remember employing Mr. Gatchell?

A. Yes, sir.

Q. On Saturday, the 19th of February?

A. Yes, sir.

68 Q. Well, state what occurred, please.

A. I hired Mr. Gatchell to reletter the steamer Jane Moseley on the side of her wheel-house. I had a contract with him for $1.75 to do the work.

Q. What was said at that time about employing anybody else?

A. Nothing at all, sir.

Q. State if you knew that he had employed anybody else?

A. No; I did not know that he had employed anybody else.

Q. Did you see Mr. Hall on the wharf that day?

A. I saw him while he was at work.

Q. Did you see him there the day before? Was he in the habit of going there?

A. No, sir; I do not think he was; I do not think I saw him before that day.

Q. Do you remember what happened to the Moseley and the wharf where the Moseley lay the day before the accident happened, when the Gibson was going away?

A. Yes, sir; I believe they took the falls off of the beam and it was hoisted up where it was made fast, and before the mate took the falls off he came to me and asked me for a piece of rope.

Q. That is, Mr. Savage?

A. Yes, sir; I took a piece of rope that was purchased for a hoisting rope to haul the coal out of the canal—3¼-inch rope, which had never been used; I gave Mr. Savage this rope.

Q. And was it used; did you see it used?

A. Yes, sir; it was used and put upon this beam or sill.

Q. Was it put in the place of the other rope—it was fastened to the center of the sill?

A. Yes, sir; to the sill, the plate, or whatever you might call it. It came down this way (indicating), and the other end was fastened to a post on the wharf.

Q. You were not there when the accident happened?

A. No, sir; I had left the wharf.

Q. Had you been yourself around the place where the Moseley lay and underneath the beam that morning?

A. Yes, sir.

Q. Did you see the rope after it was broken?

A. No, sir.

69 Q. After the accident happened?

A. No, sir; I did not see the rope.

Q. State if there was any commotion of the water that day, and whether the ferry-boats had begun to run.

A. Yes, sir; the ferry-boats were running, and I think that was the cause——

Mr. HINE: Wait a moment. Let the jury conclude. Just state the facts.

Q. Well, state the facts.

A. The ferry-boats were running, and this post was standing and blocked at the bottom like that (indicating), and I think the Moseley must have come up and struck that and knocked the whole

thing down. It was made fast and properly spiked, and everything looked secure, to the best of my knowledge, and the works were being repaired as fast as possible. Everybody was at work that we could get to work.

Q. Everybody was at work that you could get to work repairing the wharf?

A. Yes, sir.

Q. When was the channel open, do you remember, to Alexandria, so that the boats began to run?

A. I do not remember, but I think it was a day or two before this occurred.

Q. The ferry-boats had been running a day or two before this occurred?

A. Yes, sir.

Cross-examination by Mr. HINE:

Q. Let me see if I understand you, Mr. Davis; you think that the cause of the shed falling down was the ferry-boats passing by and creating a wave that struck the Moseley and carried her up against the wharf?

A. Yes, sir; the reason I think so is——

Q. (Interposing.) Well, I do not know that it is important, but you may state it.

A. Sometimes our boats lying at the wharf will snap a 6-inch hawser.

Q. Then you knew that a ferry-boat passing along there would create such commotion along your boats that it would snap a 6-inch hawser?

A. Yes, sir.

70 Q. But this hawser was a 3¼-inch, you say?

A. Three and a quarter; it wasn't a "hawser;" it was a rope.

Q. How much stronger, Mr. Davis, is a 6-inch hawser than a 3¼-inch hawser, in a general way?

A. I could not say.

Q. Well, three or four times stronger?

A. It ought to be.

Q. In speaking of a 3¼-inch hawser and a 6-inch hawser——

A. (Interposing.) A 3¼-inch rope; a hawser is a big line.

Q. In speaking of a 3¼-inch hawser and a 6-inch hawser, you mean the circumference; you do not mean the diameter?

A. Yes, sir.

Q. A 3¼-inch hawser would, then, be a trifle over 1 inch in diameter?

A. Yes, sir.

Q. And a 6-inch hawser would be about what diameter?

A. About one-third—about 2 inches.

Q. It is twice as large almost?

A. Yes, sir.

Q. Well, this 3¼-inch rope that was attached there was a rope that you say you had bought recently, but had not used it?

A. No, sir.
Q. Had not tested it?
A. No, sir.
Q. Well, now, how large were the ropes that you used in supporting that roof?
A. They were 3-inch ropes, as near as I could judge.
Q. About the same size?
A. Yes, sir; what we term a 3-inch rope.
Q. Well, now, these ferry-boats have been running how long since you have had any experience with the company?
A. For the last 8 or 10 years.
Q. And you have been there in charge of the wharf for how long?
A. About 4 years.
Q. You knew, then, pretty well what the effect of the running of the ferry-boats would have upon their boats lying there at the wharf?
71 A. Yes, sir.
Q. You had a good deal of experience in that way?
A. Yes, sir.

Redirect examination by Mr. WILSON:

Q. You do not mean to have it understood that that new rope was intended to be used as a hawser?
A. No, sir; as a rope—a double rope.
Q. What is a hawser?
A. A 5 or 6 inch rope we call a hawser; a large line.
Q. It was not used to fasten the "Moseley" to the wharf at any time?
A. No, sir; only to hold this beam in its place.

Recross-examination by Mr. HINE:

Q. You say it was used double; what do you mean?
A. I tied it around this seven or eight inch post this way (illustrating with a pencil and handkerchief). It was tied around, and the other piece went along this way (indicating), and a tackling fixed to it. This was made fast around here this way (indicating), and knotted so (indicating). The rope was double, and this was a 3¼-inch manilla rope; that was the way it was suspended (indicating). This end was cut off and that end was cut off. There were two pieces hung down like that (indicating), and they were blocked. I think the distance between these two timbers (indicating) was 10 or 12 feet, as near as I could judge. Of course I did not measure it, but they were put 2 or 3 feet from the side of the wharf.
Q. Do you know whether it was one of these pieces of new rope, or whether it was that rope attached to that tackling (indicating)?
A. No, sir.
Q. You were there an hour or two afterwards?
A. Yes, sir; I think I was. Everything was gathered up; I do not think I saw the rope at all.
Q. Did you use the rope afterwards?

A. Yes, sir; to get out coal.
Q. Did you see it was broken?
A. It might have been broken and spliced; I did not notice it.

72 Q. It is not very likely that this new rope was broken?
A. There was no rope there except the rope in the falls.
Q. The new rope did not pass over this plate?
A. Passed around it.
Q. It came down and was attached to tackling at the base of the wharf?
A. Yes, sir.
Q. How far was it, now, from the wharf itself to the tackling that this new rope was attached to?
A. Well, I could not state that?
Q. It was not more than four or five feet?
A. Yes, sir; I guess it was more than that; I guess it was 8 feet.
Q. But you do not know whether it was the new rope that broke?
A. No, sir.
Q. You did not investigate that at all?
A. No, sir.
Q. Now, as you went down there as superintendent you would have some curiosity to know what rope broke, whether it was the new rope that broke or this other rope?
A. No, sir; I do not think the rope broke at all.
Q. What did you think?
A. I thought the ends of these shores were thrown out.
Q. Who fixed the shores?
A. I fixed them myself; I had them nailed.
Q. They were fixed securely?
A. Yes, sir; we had a carpenter there who helped us to fix them.
Q. Captain Wood was here and said he picked this rope up and found it was broken and that it was defective, and that in winding it around he could unravel it all the way.
A. There was no such rope on the wharf at that time that I know of; all the rope that I used was good rope.
Q. But you do not know whether the rope broke?
A. No, sir.
Q. Now, these standards were inclined in that way (indicating); if that rope had broken, do you think the cross-piece would have fallen out far enough to have hit this young man?
A. Yes, sir; I think it would.
Q. You think it would?
A. Yes, sir.

73 JAMES CAULIFLOWER sworn on behalf of the defendant.

Examined by Mr. WILSON:

Q. What is your occupation?
A. Carpenter.
Q. How long have you been a carpenter—carrying on the trade of a carpenter?

A. I suppose about thirty years.
Q. Active business?
A. Yes, sir.
Q. Actively engaged as a carpenter?
A. Most of the time—yes, sir.
Q. Where were you employed in February, 1881?
A. Sixth-street wharf.
Q. By the company?
A. Yes, sir.
Q. What were you doing there?
A. Well, putting in the side of the Moseley and repairing the wharf; the side was broken.
Q. Will you please state what you did and what you saw with reference to the condition of the wharf and the repairs of the wharf; what you did and what your duties were?
A. I put in the joiner's work on the Moseley, and I put in a roof: took down the shores that they had under it to hold the roof. I worked under it the day before this happened.
Q. You worked under it the day before this happened?
A. Yes, sir; and considered it perfectly safe.
Q. Did you do any of the work about the uprights the day before?
A. No, sir; it was all secured satisfactorily to me.
Q. What were you doing there the day before?
A. Putting in the side of the Moseley; she had got broke.
Q. Did you see the rope?
A. Yes, sir; I saw the rope that lay across the wharf.
Q. Will you please state whether you considered that a safe fastening?
A. Yes, sir; I thought that was a good rope. It looked to be a new rope to me.
Q. Were you there when the accident happened?
A. No, sir; I had gone to dinner.
74 Q. Did you go back after it happened?
A. Yes, sir; I was there in the evening.
Q. Did you see any of the ropes then?
A. No, sir.
Q. They had all been taken away?
A. Yes, sir; they had all been taken away.

(Cross-examination waived.)

WILLIAM YONSON sworn on behalf of the defendant.

Examined by Mr. WILSON:

Q. Mr. Yonson, will you please state your name?
A. My name is William Yonson.
Q. What is your occupation?
A. I am a carpenter by trade.
Q. And been employed and engaged in carrying on the business for some years?
A. I carried it on. I am merely a journeyman workman.

Q. Were you at work on the wharf of the Inland and Seaboard Coasting Company on the 19th of February, 1881?

A. It was in February some time; I do not remember the date exactly.

Q. Were you at work on the Moseley and on the wharf?

A. Well, I was employed there by Mr. Davis or Mr. Cauliflower.

Q. What to do?

A. To fix up the side of the Moseley that had been broken in—"busted" in. I worked on the Moseley lying there.

Q. You are not employed there now?

A. Oh, no, sir.

Q. You haven't anything to do with the company?

A. No, sir.

Q. Did you examine the fastenings by which this plate was fastened up?

A. Yes, sir; I think Mr. Cauliflower took me around and took a boat to show me what I had to do and showed it to me, but I
75 did not see there was any danger or I would not have gone to work. I was at work for several days back and forth around there. I did not notice the way it was fixed, but I saw some ropes there and considered it perfectly safe.

Q. When did you stop work there?

A. Well, the day before the accident happened.

Q. In the afternoon?

A. In the evening, about sundown.

Cross-examination by Mr. HINE:

Q. Did you see Mr. Savage take away the other ropes that had been there?

A. No, sir.

Q. How many ropes fastened it when you were at work there?

A. I do not know. I saw a rope there. I did not pay any particular attention to it at the time; this has been so long since; it was fixed by a scantling or post.

Q. How many posts?

A. Several.

Q. Do you know whether there were two or three or four?

A. Several.

Q. About forty feet was taken away?

A. Something like that.

Q. They were leaning considerably, were they?

A. Yes, sir. I do not know but what they were. I did not pay any attention to them at all, but I looked at it then.

Q. You looked up to see it?

A. I looked all around it before I went to work.

Q. It didn't attract your curiosity or feeling of insecurity; you took it for granted, I presume, that it was all safe?

A. That was just it or I wouldn't have gone to work. I supposed it was all safe.

Q. But you knew nothing about it farther than a casual observation.

A. No, sir. I merely knew that I was perfectly satisfied that there was no danger.

Q. But you cannot say whether there were three or four or five ropes or three or four or five posts?

76 A. No, sir; I merely know that it was tied up.

Q. You saw it tied up, did you—that was it?

A. Yes, sir.

Mr. WILSON: We rest our case here, your honor.

Mr. Hine states that he nas no evidence in rebuttal to offer.

77 *Bill of Exceptions.*

In the Supreme Court of the District of Columbia.

GEORGE W. HALL, Plaintiff,
vs.
THE INLAND AND SEABOARD COASTING COMPANY, Defendant. } At law. No. 23783.

On the trial of this case the plaintiff, to maintain the issue on his part joined, offered testimony tending to prove that on the 19th day of April, 1881, the plaintiff, who was a pattern-maker by trade, and who sometimes did painting and lettering, was employed by one James Gatchell to letter and paint the wheel-house of the "Jane Moseley," one of the defendant's steamers, then lying on the north side of the defendant's wharf, and close thereto, at the foot of Sixth street, in the city of Washington; that the said Gatchell was employed by the defendant to paint and letter said steamer; that while engaged in the work of painting and lettering said steamer, and while standing on a platform thrown by the defendant from its said wharf to the guards of the said steamer, a portion of said wharf, or the uprights which supported the roof of the shed, fell in on the plaintiff and crushed his cheek-bone, rendering him unconscious, and disabling him from labor until the last part of April, 1881, and now in stooping for any length of time everything gets black before his eyes; that the plaintiff was attended by a physician for five or six months after said injury happened; that the said attending physician, when the swelling of the cheek had somewhat subsided, found the eye completely suffused with blood, the cheek-bone crushed in, and a part of the jaw so much bruised that it could not be used for two months; that for about eight or nine days after the accident the said physician thought the plaintiff might die from concussion of the brain, and that, in the opinion of said physician, the plaintiff has not been well since, the injury having developed a peculiar indifferent disposition of mind, and there still being danger of the development of a tumor or cancer from the bruise in the cheek;

78 and also that prior to the infliction of the injury complained of the plaintiff was strong and hearty.

And further to maintain the issues on his part joined the plaintiff offered testimony tending to prove that during a heavy freshet that occurred shortly before the injury to the plaintiff the steamer

"Jane Moseley" was crushed or pushed over against the dock, so that it was necessary to cut away a portion of the piling and of the roof to get her off; that there was a cross-piece put up to support the roof, and two uprights put in to support the roof, and plenty of blocks and ropes put in to hold it at the time; that afterwards and before the accident to the plaintiff some of the lashings had been removed by the mate of one of the company's ships, who had originally secured the lashings, and that the said mate left only one block and fall to support the cross-piece which had been cut out in order to get the said steamer Moseley off the dock, and that after the accident the rope passing from said block and fall across the wharf was found broken, and that the witness, who was at the time of the accident in the company's employment, in examining the rope after the accident found that it was all dry rot, which could have been discovered if the rope had been tested.

Whereupon, after additional evidence as to the permanency of the injury, the plaintiff rested and the defendant, to maintain the issues on its part joined, offered testimony tending to prove that about a week prior to the injury of the plaintiff there was a great freshet and ice-gorge in the Potomac, which tore some of the defendant's steamers from their fastenings at the defendant's wharf and greatly injured and impaired the wharf; that the force of the ice and current carried the said steamer "Jane Moseley" against the wharf, crushing in the bottom part of the shed, carrying the steamer's guards three or four feet over the wharf, and thrusting the wheel against the wharf; that the work of dislodging the said steamer from this position was committed to the mate of one of the defendant's steamships, then lying at said wharf, under the supervision of the defendant's superintendent; that in order to get the said steamer off of the said wharf, and to give the workmen an opportunity to get at the steamer, a piece of the plate or upper portion of the frame-work of the shed covering the wharf, running parallel with said steamer and corresponding in length with the wheel-house of said steamer, was cut out; that after said steamer was floated the said piece was replaced and tied in its place by lashings at both ends where it had been cut and was supported by two posts inclined inward from the edge of the wharf and having cleats nailed at their foot to prevent their slipping; that this was a temporary arrangement, intended to remain until the floor of the wharf was repaired and footing provided for the said posts; that the steamship to which the said mate belonged was ready for sea before the carpenter had finished the repairs of said wharf; that on the day before the injury happened to the plaintiff the said mate took off the blocks and falls by which said piece of said plate was fastened, but upon taking them off he lashed said piece of said plate with a three-inch manilla rope, sufficient, in the opinion of said mate, to hold a weight of six tons; that in addition the said mate fastened the said piece in its position by a new, three-quarter-inch rope which had never been used and which passed from the centre of said piece of said plate across the said wharf and was made fast to a post in the said wharf; that in doing

79

said work all the care was taken that a man could take for the good and welfare of anybody, and that the said lashing and fastenings fixed by said mate on said plate the day before said accident were stronger than those that had at first been affixed thereto.

The defendant, further to maintain the issues on its part joined, offered in evidence the testimony of the company's superintendent and of two experienced carpenters, tending to prove that due care had been exercised in the work of the repair of said wharf and in the fastening of the said piece of said plate, and that said witnesses were at work on said boat and on said wharf just before the happening of said accident and considered the said fastening perfectly safe.

That the plaintiff was not in the employment of the defendant, but went on said platform voluntarily and without the knowledge or consent of the defendant, and that the dangers of the work in which the plaintiff was engaged and the dangerous condition of said wharf were obvious at sight.

Thereupon the defendant rested.

80 The defendant thereupon asked the court to instruct the jury as follows:

First. If the jury find from the evidence that the wharf of the defendant had been injured by a freshet and was being repaired, and that fact was known to the plaintiff, and the plaintiff voluntarily, and without being requested by the defendant, went into a dangerous part of the wharf and into a dangerous position and was injured by the falling of a beam, which had been secured by the servants of the defendant with reasonable care, the plaintiff is not entitled to recover.

Second. If the plaintiff went into the defendant's premises voluntarily, and without the knowledge or consent of the defendant, and was injured by the falling of the beam referred to in the evidence, the plaintiff is not entitled to recover.

Third. If the jury find from the whole evidence that the defendant was engaged in the repair of one of the company's steamers, and the injury of which the plaintiff complains was occasioned by the negligence of the servants of the defendant engaged in repairing said boat and the adjacent wharf, then the plaintiff is not entitled to recover.

Fourth. That there is no evidence whatever of any negligence on the part of the defendant in this case.

Fifth. The fact that an injury was occasioned by the plaintiff is not itself evidence of negligence, but the burden is upon the plaintiff to show affirmatively that the defendant did not take ordinary care in the repair of said wharf and steamboat, and that the injury complained of was occasioned by the failure of the company defendant to take ordinary care in the repair of its wharf and property, and the defendant corporation is responsible for ordinary care only in the selection of its servants and material for the use of its employees and servants.

Thereupon the court announced the law as follows:

I think I shall have to put the case to the jury upon the last proposition. The principal that an employee cannot recover for an in-

jury sustained by the carelessness of a coemployee has been very much modified by the late decisions, and an exception to that doctrine has been made when the injured party is not in the same department with the party who is guilty of the negligence—that is, if the
81 party injured is in a different department of employment and he receives an injury through the negligence of another employee, with whom he was acting in common, in connection either with his duty or with his carelessness, the injured party may recover against the common employee, unless the common employer of both of these can show that he has been guilty of no negligence, but that he has exercised ordinary prudence and diligence by the employment of proper servants in the other department, and by the use of proper and good materials and workmanship; in other words, under such circumstances he is only bound to the party injured for his negligence, and that negligence may be manifested in the employment of incompetent persons, or in the use of poor or incompetent matarials from which the injury has originated; so that, I think, upon the whole the question for the jury here is, in the first place, whether the plaintiff was, although in the employment of this company—well, perhaps I am passing upon a point that ought to be reserved until another step is disposed of, and that is, whether the plaintiff, under all the circumstances of the case, had any right to be there at all.

The instructions asked for by the counsel for the defendant are to the effect that if the jury are satisfied that the wharf had suffered from the elements, and if they were then putting it in repair and the wharf was not being used for purposes of navigation, any person who went there went at his own risk. Well, I should hold that to be so. Now, query: Whether the plaintiff is in that situation? It appears that the proper officers of this company did employ Mr. Gatchell to do some work upon the steamer—that is, to paint the name of the steamer, I believe, upon the paddle-box. Well, he, as I think he had a right to do, employed another person to assist him in that job.

It appears to me that when one requires a mechanic to do a particular job he must contemplate that that mechanic will engage such assistance as may be necessary to execute it, and that he may do it under the protection of the law; and that if this work is to be performed under circumstances that require more than ordinary prudence or caution on the part of the employee, the result of an injury would be the same to a man he has engaged as to himself; so that, as a proposition of law, I hold that if the jury come to the con-
82 clusion that Hall was employed by Gatchell to assist him in a job which he had been employed by a proper officer of the company to perform, he was there in a capacity which would not relieve the company from responsibility.

Well, the next question is, and I think I will have to determine upon the facts, as a question of law, whether the plaintiff here was in a department of work which was identical with that department in common operations in which this negligence, if any negligence occurred, happened.

Now, it appears that the wharf was very much injured by the elements and that this company very properly went to work with all the force that they could collect for the purpose of repairing the damage, and for this reason they had carpenters, and the mate was there with his crew, and I do not know what other persons, but they are mentioned by the witnesses, all connected in this common object of securing this steamboat and the wharf and putting things in order. Now, Mr. Gatchell is employed for the purpose of lettering the name of the "Moseley" on the side. It appears to me that this was not a work that was identical with the general operations that were going on; that it was a department distinct from the others. The work was a peculiar branch of art, with which neither seamen nor carpenters nor the other mechanics engaged in the work of securing that steamboat and repairing the wharf and taking care of the steamer had any connection whatever.

I am, therefore, quite of the opinion that if the jury come to the conclusion that, in the first place, this man was there under the employment of Gatchell and that Gatchell had been hired to perform this work by a competent officer it was a different department of the common employment, distinct from the other departments of the work that was going on, and that, so far as these two points are concerned, the plaintiff is entitled to maintain his action.

Now, in regard to the question of negligence here, if the jury shall determine these two points against the defendant, this is the next question for determination. The degree of diligence that is imposed upon a common employer is ordinary diligence, ordinary care, such as prudent men usually observe in carrying on their business. They are not called upon for extraordinary care, but for such prudence and such care as, under all the circumstances of each special case,
83 an ordinary prudent and skillful man would take. Now, all the company could do, all that an individual who was carrying on large operations, in which he must employ contractors and superintendents and mechanics of various descriptions can do, is to employ men of experience and skill. Of course, it is not to be expected that a man who is carrying on a large business could do it all personally, and it is well known that these companies carry on their work by the employment of various individuals in various capacities. One of the main duties that is to be imposed upon a common employer for the protection of his employees is that he shall employ competent persons and if he employs competent persons and furnishes them with the means of carrying on their work in a proper manner it is all that is to be expected in the transaction of human affairs.

The law is not unreasonable; it does not require them to be responsible for all hazards, for a man when he engages in any business undertakes the risks that are incident to that business, and he cannot expect to remain whole unless through some fault or negligence he has suffered an injury from others. I shall, therefore, have to instruct the jury in this case that if they believe from the whole case, under all the circumstances in the case, that the defendant here was in the exercise of ordinary care, of such care and diligence as

men under the same circumstances would exercise, they have discharged their responsibility imposed upon them by the law, and, however serious the injury may be to the plaintiff, it is a part of the risk that he undertakes. It is one of the risks that all of us have to assume when we enter into any business. I should be disposed to substitute my instructions upon the points which I have indicated in place of those which are asked for by counsel.

Whereupon counsel for defendant declared he was entirely satisfied with the instructions above given by the court in regard to the question of negligence, and noted an exception to the rejection of the first, second, third, and fourth prayers offered; to which refusal of the court to grant said first, second, third, and fourth prayers and each one of them the defendant then and there excepted before the jury retired, and prays the court to sign and seal this its first bill of exceptions, which is done, now for then, this 13th day of January, A. D. 1883.

ARTHUR MacARTHUR, *Justice.* [SEAL.]

84 Whereupon counsel for either party addressed the jury, and afterwards the court instructed the jury as follows:

GENTLEMEN: There are some questions of law in this case generally of an interesting character, and which have given rise to considerable judicial controversy, and that is, where a party has been injured, while in an employment like plaintiff's, through the fault of other employees. The general principle is that the employer is not liable, for the reason that it is a hazard incident to the employment that the employee assumes when he enters into the engagement. There are public considerations also for it—that it induces the servants who are in the same employment to use a sort of vigilance over each other, to see that each performs his duty up to the standard of skill and diligence, and thus procuring fidelity and a faithful discharge of duty, and making each man, as it were, the watcher of his fellow-workman. That is undoubtedly the general principle, about which there is no controversy, and, least of all, there is no controversy between the two very learned and experienced counsel who have tried this case.

[I intimated, while passing upon their instructions, that there was an exception, and stated that this doctrine only applied where the party injured was in the same line of employment, or in the same line of work with the workmen who were in fault. Now, if you come to the conclusion that Gatchell entered into this employment and obtained the plaintiff's services to assist him in executing that work, I am of the opinion that it was not in the same line of employment (or work, rather) that the workmen were engaged in who were repairing the wharf and who were trying to secure this structure; that it was a different branch of labor, and while it might be true that the men who were engaged in fastening ropes and in securing that building would have no remedy for an injury which they might have sustained through the fault of any other workmen engaged in the same work against their employer, yet the work upon which this plaintiff was engaged was not connected with the struct-

ure and not connected with the wharf. It was a skilled kind of labor that was distinct from the other, and so, as a matter of law, I charge you that he was not in the same line of employment, and that, therefore, the general principle does not include him—
85 does not apply to him. And I intimated further, that, being there upon the execution of a job which had been hired out by the proper officers of the company, both Gatchell and his assistant were there legally and properly, and that they were entitled to the protection of this principle which I have just been explaining to you.]

Now, then, the question of responsibility upon that theory is to be disposed of in this case. The question of negligence depends upon the circumstances, the peculiar circumstances, of each case. I have charged you and do now that the defendant was responsible for ordinary diligence and care in the conduct of the operations it was carrying on there. I think that the counsel for the plaintiff here states the doctrine a little too broadly, and I will explain to you why. There is no such thing as negligence of this description, as an absolute responsibility, independent entirely of the circumstances of the case. The mere fact that a party was injured is not sufficient to support an action, and so conscious was he of this that the plaintiff introduced a number of witnesses for the purpose of showing the circumstances under which this accident occurred, in order to establish the negligence of the defendant. Now, when I used the term ordinary diligence I spoke of it with reference to the circumstances of a case. A person driving a horse and cart upon the streets of a city would be required to exercise a much less degree of carefulness than would a railroad corporation running their steam train through the streets of the same city. They would have to slack their speed and ring their bells and blow their whistles; and what — be ordinary care and all the care that would be required of a man who was driving a cart or buggy would be the grossest possible negligence in the case of a steam railroad; so that the question of ordinary negligence is always with reference to the case itself, and what would be ordinary diligence in each case is a question to be determined by the jury upon the facts, and upon the facts, of course, which pertain to the testimony.

Now, it has been pressed upon the court to say to you that the mere falling of this structure exhibited that degree of negligence which rendered the defendant responsible, and the case of a building where a party had been injured is a case cited in which the court apparently gave some countenance to this doctrine.
86 What the particular circumstances of the case were I did not read the case to see, but I think I can illustrate that matter to you so that it will appear perfectly plain. Some of you undoubtedly reside in houses that you own; perhaps some of you have constructed them, and in constructing them have employed masons, bricklayers, carpenters, plasterers, plumbers, &c., and have done everything in your power to make the house safe for your family to live in—safe in the daytime and safe in the night time. Now, suppose you invite your neighbors to visit you, and while there the

plastering falls down and injures them badly. If it were the law that the mere fact that the structure fell is evidence of neglect, you would be responsible. After having done everything in your power to make the house secure and to make it perfectly safe an accident occurs, the law is not so unreasonable as to hold you responsible. After human care and human sagacity have exhausted themselves accidents will happen, and when they occur it is the misfortune of the party who has suffered, and the law is not so unreasonable, as in the case which I have just supposed, as to make you responsible if, in point of fact, you used the carefulness and diligence which I have just been defining. And so here it would be impossible for you to judge of the degree of diligence and care which would be required of the defendants unless you had reference to the precise surroundings at the time. The wharf was a wreck, the ships had been torn from their moorings, and this building, which we have been hearing a good deal about during the progress of the trial, suffered in the common wreck and injury and it had to be supported and sustained for temporary purposes. If they put up a structure there held by a rope as a permanent building, and if they intended to maintain that wharf with that structure in that condition, you will see at once that they were guilty of gross negligence. But you must look at the circumstances, and under all those circumstances you are to decide whether they were diligent and careful, within the meaning of the law, as to what they did do, and among the elements of care which is imposed upon them is the selection of proper workmen and the use of proper materials. If all the work, under the circumstances, was conducted as carefully by the agents of the company as it could be, if the persons they employed or the contractors or whoever carried on the work there were competent, as well as the materials, it would be for you to determine; but there is no doubt at all that the defendant is responsible for that degree of care. The position of affairs was not as it had been before the freshet, not as it had been before the ice played havoc there, because then any person might have gone on the wharf with perfect safety, and then they were bound, to adopt the language of counsel, to exercise the care that these circumstances seemed to demand. In fact, ordinary care under other circumstances would have been negligence in the case just as it stood; in other words, they must adapt their care and diligence to correspond, as it were, with the danger of the position, and if they have failed in that respect, because of which this injury occurred, then they are undoubtedly liable to the plaintiff in this action.

It does not occur to me, gentlemen, that I can say anything further in explanation of the law.

You will have to determine the facts, and if you conclude, on the whole, that the plaintiff is entitled to a verdict you will assess his damages according to what you think he is entitled to.

To which said instructions, included between brackets, thus [ ], the defendant then and there, and before the jury retired, excepted, and prays the court to sign and seal this its second bill of excep-

tions, which is done, now for then, this 13th day of January, A. D. 1883.

ARTHUR MacARTHUR, *Justice.* [SEAL.]

87 OCT. 1, 1883.

Proceedings before the supreme court of the District of Columbia, in gen. term.

Present: Chief Justice Cartter and Justices Hagner and Cox.

WEDNESDAY, *Jan'y* 23, 1884.

Session resumed pursuant to adjournment.

Present: Chief Justice Cartter and Justices Hagner and Cox.

GEORGE W. HALL
v.
INLAND AND SEABOARD COASTING COMPANY } 22783. Law.

Now again come here as well the plaintiff as the defendant, by their respective attorneys; whereupon, it appearing to the court the order of the court below overruling the motion for a new trial on a case stated upon the ground that the verdict of the jury was against the weight of evidence is not an order from which an appeal lies to this court; and it also appearing to the court that the plaintiff's exceptions to the admissibility of evidence and to the rulings of the court were not well taken, the said appeal is hereby dismissed and the motion for a new trial on exceptions is now overruled and the judgment of the court is affirmed with costs.

88 *Filed Mar. 5th,* 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 5 day of March, 1884.

GEORGE W. HALL
vs.
THE INLAND AND SEABOARD COASTING COMPANY. } No. 22783.

In error.

Know all men by these presents that we, The Inland and Seabard Coasting Company, principal, and J. W. Tompson, surety, are bound unto the above-named George W. Hall in the sum of seven thousand dollars, to be paid to the said George W. Hall, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this fifth day of March, 1884.

Whereas the above-named The Inland and Seaboard Coasting Company has prosecuted its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named The Inland and Seaboard Coasting Company shall prosecute

its said writ to effect and answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE INLAND AND SEABOARD
COASTING COMPANY,
By JOHN W. TOMPSON, *Pres'd.* [SEAL.]
J. W. TOMPSON. [SEAL.]

Sealed and delivered in presence of—
WM. TOMPSON.

Approved, to operate as a supersedeas, March 5th, 1884.
D. K. CARTTER,
Ch'f Justice.

89 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between George W. Hall, plaintiff, and The Inland and Seaboard Coasting Company, defendant, No. 22783, at law, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 5th day of March, in the year of our Lord 1884, and of the Independence of the United States the 108th.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To George W. Hall.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The Inland and Seaboard Coasting Company is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

[Seal Supreme Court of the District of Columbia.]

Test: R. J. MEIGS, *Clerk.*

Service of copy ack'd M'h 5, 1884.

L. G. HINE,
S. T. THOMAS, *For Pl'ff.*

90 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 3d day of October, 1884.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 3d day of October, 1884.

D. K. CARTTER, *Chief Justice.* [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 3d day of October, 1884.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 121. The Inland & Seaboard Coasting Company, plaintiff in error, *vs.* George W. Hall. Filed 17th October, 1884.

Supreme Court of the United States.

OCTOBER TERM, 1887.

THE INLAND AND SEABOARD COASTING COMPANY, PLAINTIFF IN ERROR, v. GEO. W. HALL.	*No.* 121.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief for Plaintiff in Error.

STATEMENT OF THE CASE.

This was an action brought by George W. Hall, the plaintiff below, to recover damages for injuries caused to the plaintiff by the negligence of the defendant.

The jury rendered a verdict in favor of the plaintiff for $4,000.

Record, p. 3.

The defendant thereupon moved for a new trial on exceptions taken at the trial, and also on the following grounds:

1. Because the verdict was against the weight of evidence.

2. Because the verdict was against the instructions of the court.

3. Because the damages awarded by the jury were excessive.

The motion for a new trial on the three grounds above specified was heard by the justice before whom the case was tried and was over-ruled, and from the order over-ruling and denying the motion an appeal was taken to the court in general term.

The order and appeal are as follows:

" The motion for a new trial coming on to be heard upon " the pleadings, testimony, and rulings of the court, as set " forth in the pleadings, and the stenographic report contain- " ing the whole of the evidence in said case, and being a case " stated, said report being filed herewith and made Exhibit " A, the same is overruled, and from the order of the court " overruling said motion the defendant hereby appeals to the " court in general term.

By the court.

MACARTHUR, *Justice.*

Record, p 5.

The court in general term dismissed the appeal, and entered the following judgment:

" Now, again come here, as well the plaintiff as the de- " fendant, by their respective attorneys, whereupon it ap- " pearing to the court the order of the court below over- " ruling the motion for a new trial on a case stated upon " the ground that the verdict of the jury was against the " weight of evidence is not an order from which an appeal " lies to this court, and it also appearing to the court that " the plaintiff's exceptions to the admissibility of evidence " and to the rulings of the court were not well taken, the " said appeal is hereby dismissed, and the motion for a new

" trial on exceptions is now overruled, and the judgment of " the court is affirmed, with costs."

Record, p. 61.

The defendant below then sued out the present writ of error.

Record, p. 62.

Assignment of Error.

The court below erred in dismissing the appeal taken from the order made at the special term disallowing the defendant's motion for a new trial on the ground that the verdict was against the weight of evidence.

The assignment of error raises the question whether an appeal lies to the general term of the supreme court of the District of Columbia from a denial by that court in special term of a motion for a new trial made on the ground that the verdict was against the weight of evidence.

In the case of the Metropolitan Railroad Company *v.* Moore, ~~Morse~~ (121 U. S., 558) the same question was presented in precisely the same way that it is presented by the record in this case.

This court there held that " the supreme court of the Dist- " rict at general term erred in dismissing the appeal from " the order at special term, denying the motion for a new " trial on the ground that the verdict was against the weight " of evidence. It should have entertained and considered " the appeal on that ground."

For the reasons stated at length in the opinion of this court in the case referred to, the judgment of the court below in the present case must be reversed.

NATH'L WILSON,
Atty. for Plff. in Error.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 121.

THE INLAND AND SEABOARD COASTING COMPANY

vs.

GEORGE W. HALL.

In Error to the Supreme Court of the District of Columbia.

L. G. Hine,
Sidney T. Thomas,
For Appellee.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 121.

THE INLAND AND SEABOARD COASTING COMPANY

vs.

GEORGE W. HALL.

In Error to the Supreme Court of the District of Columbia.

This is an action to recover damages for personal injuries and arose under the following circumstances:

During the forenoon of Saturday, the 19th day of February, 1881, the plaintiff, whose trade is that of a pattern-maker, but who is also skilled in the art of sign painting, was engaged with one Gatchell in lettering the wheel-house of the appellant's steamboat "Jane Moseley," then lying at the company's wharf, foot of Sixth street southwest, in this city. Gatchell was employed by one Davis, the appellant's superintendent, the latter stating that the work must be done with dispatch, so that the vessel could proceed to sea the following Monday morning. Gatchell, in order to expedite the work, asked the appellee, then temporarily out of employment, to assist him, and he did so.

While the appellee and Gatchell were standing on a platform, thrown by appellant from its wharf to the "Moseley's"

guards, and engaged in lettering the name of that vessel on her wheel-house a part of the roof of the wharf and the upright timbers supporting the same—which, with a portion of the piling, had a few days before been cut away in order to relieve the "Moseley," she having been in consequence of a freshet in the river pushed over on the wharf—fell upon the plaintiff, striking him chiefly about the head, frightfully bruising and cutting his face, rendering him entirely unconscious for two days, so that his attending physician feared he would die of concussion of the brain, and disabling him from working at his trade for a long time.

The portions of the wharf and upright timbers supporting the same which had been cut to relieve the "Moseley," as before mentioned, were at first fastened with what appeared to be a sufficient number of ropes and blocks; but after the fastenings were first made, and before the accident, some of the ropes and lashings were removed by one Savage, mate of appellant's steamer "Gibson," who had originally made the fastenings. Savage left only one block and fall to support the cross-beam, which had been cut. After the accident John R. Wood, who, at the time thereof, was captain of appellant's steamboat "Lady of the Lake," examined the rope left by Savage to secure the cross-beam and found that it was an old rope which had been used on the topsail of the "Lake," and that it was all "dry-rot," which could have been detected if the rope had been tested. *The rope had not been tested.*

THE QUESTIONS PRESENTED FOR REVIEW ARE—

1. Whether the plaintiff at the time of the injury was properly upon the defendant's wharf.

2. Whether the plaintiff is within the rule of law which exempts the master from responsibility for injuries to his servant resulting from the negligence of a fellow-servant in the same employment.

3. Whether the defendant was guilty of negligence in respect of the injury complained of.

4. Whether the verdict was in conflict with the evidence.

5. Whether the damages awarded by the jury are excessive.

APPELLEE NOT A VOLUNTEER.

The appellee, at the time of the accident, was lawfully upon appellant's wharf. He was assisting Gatchell, whom Davis, its superintendent, had employed to perform a special service. Gatchell employed the appellee to assist him in expediting that service. The appellee was not then a volunteer upon defendant's wharf, but was there, as he had a right to be, assisting Gatchell, upon appellant's implied invitation, and it was bound, therefore, to exercise, at least, ordinary care that no harm came to him by reason of any unsafe condition of its premises.

Holmes vs. *Northeastern Railway Co.*, *L. R.* 4 *Exch.*, 254.

The appellant's wharf was a public wharf, and whether the appellee was invited upon the premises by the contract of service or by the calls of business or by direct request is immaterial.

"The party," says Judge Cooley (*Cooley on Torts, p.* 550), "extending the invitation owes a duty to the party accepting it to see that at least ordinary care and prudence is exercised to protect him against dangers not within his knowledge and not open to his observation."

To the same effect see—

Indemaur vs. *Dames*, *L. R.* 2 *C. P.*, 311.

"Many cases illustrate the rule," says Judge Cooley (*Cooley on Torts, page* 605) "that where one expressly or

by invitation invites others to come upon his premises, whether for business or for any other purpose, it is his duty to be reasonably sure that he is not inviting them into danger, and to that end he must exercise ordinary care and prudence to render the premises reasonably safe for the visit."

APPELLEE NOT A FELLOW-SERVANT.

The appellee is not within that rule of law which exempts the master from responsibility for injuries to his servant resulting from the negligence of a fellow-servant in the same employment, as contended for by the appellant.

The appellee was a skilled person—a sign painter—engaged in a different employment and receiving his compensation from a different source from the employés of the company who were working to promote the common object of their master.

The fact that the plaintiff was not in the pay of defendant is the conclusive test.

Burke vs. *Norwich, &c., R. Co.*, 34 *Conn.*, 474.
Smith vs. *N. Y., &c., R. R. Co.*, 19 *N. Y.*, 127.

A similar conclusion has been reached by the English court of appeals in a recent case.

Swainson vs. *Northeastern R. R. Co.*, 3 *Exch. Div.*, 341.

APPELLEE NOT GUILTY OF CONTRIBUTORY NEGLIGENCE.

It was not the appellee's business before entering upon the work for which he was employed to examine the fastenings and determine for himself whether they were secure. He might not have known if he had. He was not acquainted with ropes, blocks, and tackle. He had a right to suppose appellant had exercised proper care in this respect.

It is quite unnecessary, we think, to cite specific cases to prove that the conduct of the appellant in this case was

negligent and that it was the proximate cause of the injury complained of.

VERDICT FOR $4,000 NOT EXCESSIVE.

The appellee's injuries were little less than fatal; the damages are not excessive.

The damages in these cases must depend very much on the good sense and sound judgment of the jury upon all the facts and circumstances of the particular case.

Railroad Company vs. *Barron*, 5 *Wall.*, 90.

In the case of *Thurston* vs. *Martin* (5 *Mason*, 197), an action for personal injuries, Mr. Justice Story said: "The court, before setting aside a verdict for excessive damages, should see clearly that they are excessive; that there has been a gross error; that there has been a mistake of the principles upon which damages have been estimated or some improper motives or feelings or bias which have influenced the jury * * * upon a mere matter of damages, where different minds might and probably would arrive at different results, and nothing inconsistent with an honest exercise of judgment appears. I for one should be disposed to leave the verdict as the jury found it."

In *Walker* vs. *Erie Railway Co.*, 63 *Barb.* (*N. Y.*), 260, an action to recover damages for personal injuries, a motion to set aside a verdict of $20,000 was denied.

It is only in extraordinary cases that the court will act.

Chicago, &c., R. R. Co. vs. *Wilson*, 63 *Ill.*, 167.

Louisville & N. R. R. vs. *Fox*, 11 *Bush.* (*Ky.*), 495.

The learned justice who presided at the trial in this case seems to us to have laid down the law in the main correctly. (Rec., pp. 58, 59, 60, 61.) His charge was so fair, indeed, as to draw from counsel for the plaintiff in error the remark